



CHILD LABOUR AND HUMAN RIGHTS

DISSERTATION

**SUBMITTED IN PARTIAL FULFILMENT OF THE
REQUIREMENTS FOR THE AWARD OF THE DEGREE OF**

Master of Laws

By

MOHAMMAD QAMARUDDIN

Under the Supervision of

DR. ZAHEERUDDIN

SENIOR LECTURER

**DEPARTMENT OF LAW
ALIGARH MUSLIM UNIVERSITY
ALIGARH (INDIA)**

2000

DIESIS

CHE 2002

2



8 MAR 2002



DS3138

Fed in Computer
Under the Supervision



DEDICATED
TO MY
GRAND MOTHER

Dr. ZAHEER UDDIN

SENIOR LECTURER

Faculty of Law



Aligarh Muslim University

Aligarh - 202002

(U.P). INDIA

Dated

CERTIFICATE

This is to certify that Mr. Mohammad Qamaruddin, student of LLM (Final) has completed his dissertation entitled “**Child Labour and Human Rights**” in the partial fulfillment of the requirement for the degree of L.L.M under my supervision.

I wish him all success.

A handwritten signature in black ink, appearing to read "Zaheer", with a horizontal line drawn underneath it.

Dr.Zaheer Uddin



“We are guilty of many errors and many faults,
But our worst crime is abandoning the children,
Neglecting the fountain of life”

“Many of things we need can wait.

The children cannot.

Right now is the time his bones are being formed,

His blood is being made and

His senses are being developed,

To him, we can not answer” tomorrow.

“His name is Today” *

Gibriel Mistrel

- * Quoted from “Legislative and Institutional Frame Work for Elimination of Child Labour”
An Analysis, Prof. S. Akhtar, M.Z.M. Nomani & H. Umar, A.L.J. Vol. XII 1997, P. 19.

ACKNOWLEDGEMENT

In the name of God the most merciful and beneficent who showed me the path of rightness and blessed me to get the strength to embark upon this task.

I am highly indebted to and can not adequately express my deep obligation for the benign, kind and encouraging supervision of Dr. Zaheer Uddin (Lecturer) in the Department of Law, without whose efforts it would not have been possible for me to complete my work.

It has been my privilege to work under his supervision that in spite of his preoccupation with a series of academic engagement spared some of his valuable time for my work.

I wish to record my gratitude to Prof. S.S.H.Azmi, Prof. Saleem Akhtar (Dean and Chairman) Faculty of Law, Prof. V.S.Rekhi, Prof. Qaisar Hayat, Prof. Nazeer Khan, Prof. Ishaq Quraishi, Prof. Zakaria Dr. Javed Talib, Dr. Zubair Khan, Mr. Akhlaq, Mr. Zakiuddin Khairuwala, Dr. Badar, Dr. Ashraf, Dr. Iqbal Khan, Dr. Iqbal Hadi, Dr. Faizan Mustafa, Dr. Shakeel Samdani, Mr. Fareed Zaidi, Mr. Zafar, Mr. Naumani, Mr. Shakeel, Mr. Zafar Iqbal, Mr. Nafees (Lecturer) Faculty of Law, Aligarh Muslim University, Aligarh for their wholehearted cooperation.

I have no words to express my gratitude to my Grandfather, parents, brother, sisters and brother in laws.

I can not restrict myself to give thank to my uncle Mr. Mainuddin, Sageeruddin, Samiuddin, Jamaluddin, Jalaluddin, Md. Umar, Mushtaq, Ziauddin for rendering me their help whenever I required.

My special thanks to My fiancé Babli, Mr. Aziz and Muddin

My special thank to my friends Mr. Nasir, Suhail, Pinky, Mustaqeem, Anwar, Babloo, Rashid, Khalid, Dr. Sufiyan Rais, Imran Rais, Teg Alam, Aziz, Aslam, Fareed, Firoz Alam (Advocate), Farooq (Advocate), Dr. Ishtiyah, for their whole hearted supports and cooperation.

I am proud to thank to Mr. Nazim Ali (Lecturer), Mushtaq Ali (S.O) Prof. Farooq Azam, Er. Iqbal Hadi, Masroor, A. Mansoori (U.P.P.), Mr. Anoop Mittal and Mr. P. Taneja, Suresh, Ali Nawaz Zaidi, Anurag, Alok, Banti, Sharif, Fauzia, Yasmin, Akhlaq, Saeed, Saleem, Zaheer, Aqil, Ateeq, Noman, Salman, Pinki, Anwar.

I am equally grateful to Mr. Wajid Hussain, Roshan Khayal, Sabir, Tariq, Farhat, Arshad, Raees, Yaseen, Naeem, Javed and other staff of Law Department, Aligarh Muslim University, Aligarh.

Lastly, My special thank to Er. Khusro Masood and Mr. Sajid Isalm & Talha Bin Murshid.

 M. Qamaruddin

M. QAMARUDDIN

CONTENTS

Certificate	Page No.
Acknowledgement	
Introduction	1 - 4
 CHAPTER – I. CHILD LABOUR : A BRIEF STUDY	 1 - 26
1. Historical Background	1 - 8
I. Child Labour in Ancient India.	
II. Child Labour in Medieval India.	
III. Child Labour in British Period.	
IV. Child Labour at Present.	
2. Meaning And Definition	9 - 12
3. Causes Of Child Labour	12 - 26
I. Education.	
II. Economic Necessity.	
III. Population.	
IV. Poverty.	
V. Illiteracy.	
VI. Cheap Labour.	
VII. Greedy Contractors.	
VIII. Uncaring Parents.	
IX. Low Wages.	

X. Indebted Parents Pledging Child Labour.

CHAPTER – II. CHILD LABOUR AND HUMAN RIGHTS	27 -67
(1) Nature and Concept of Human Rights.	27 - 28
(2) United Nations Charter and Human Rights.	29 - 30
(3) Provisions of the Charter Concerning Human Rights.	30 - 35
(4) United Nations Commission on Human Rights.	35 - 40
(5) Universal Declaration of Human Rights.	40 - 58
↗ (6) The Declaration of the Rights of the Child, 1959.	59 - 63
↘ (7) International Convention on the Rights of the Child, 1989.	63 - 65
↘ (8) National Human Rights Commission's Schemes for the Child Labour.	66 - 67

CHAPTER – III. LEGISLATIVE ENACTMENTS TO PROTECT

THE CHILD LABOUR.	68 - 96
(1) The Children (Pledging of Labour) Act, 1938.	68 - 69
(2) The Child Employment Act, 1938.	69 - 69
(3) The Factories Act, 1948.	70 - 70
(4) The Plantation Labour Act, 1951.	70 - 70
(5) The Merchant Shipping Act, 1958.	71 - 71
(6) Motor Transport Workers Act, 1961.	72 - 72
(7) The Apprentices Act, 1961.	72 - 72
(8) The Atomic Energy Act, 1962.	72 - 72
(9) Beedi and Cigar Workers (Condition of Employment) Act, 1966.	73 - 73
(10) The Child Labour (Prohibition and Regulation) Act, 1986.	73 - 96

CHAPTER – IV. CONSTITUTIONAL PROVISIONS	97 - 105
(1) Explicit Provisions dealing with the Welfare of the Children.	99 - 101
(2) Implicit Provisions dealing with the Welfare of the Children.	102 - 105
 CHAPTER – V NATIONAL AND INTERNATIONAL PERSPECTIVES	 106 - 136
(1) International Charter and Child Labour.	106 - 107
(2) International Labour Organization.	107 - 110
(3) UNICEF's Approach.	111 - 112
(4) GATT and W.T.O.	112 - 113
(5) Tom Harking Bill and Rugmark level on Carpets.	113 - 116
(6) National Policy for Child Labour.	116 - 121
(7) Educational Policy for Child Labour.	121 - 126
(8) Health Policy for Child Labour.	127 - 127
(9) Governments Programmes for Child Labour.	127 - 132
I. Anti Poverty Programmes	
II. Rehabilitation Programmes	
III. Common Minimum Programmes	
IV. Projects to Open up Minds of Working Children	
V. National Authority to Eliminate Child Labour.	
(10) Report of the Royal Commission on Child Labour.	133 - 136

CHAPTER – VI. JUDICIAL RESPONSE	137 - 152
CONCLUSION AND SUGGESTIONS	153 - 159
BIBLIOGRAPHY	160 - 161
ARTICLES	162 – 164
ABBREVIATIONS	165 – 167
JOURNALS	168 - 168
MAGZINES	168 – 168
NEWSPAPERS	169 – 169
ENCYCLOPAEDIA	169 – 169
REPORTS	170 - 170
TABLE OF CASES	171 - 172

INTRODUCTION

INTRODUCTION

Child is said to be the father of man and citizen of tomorrow. In India family enjoys little recognition without child. The children are the hope of parents and future of nations and thus be given adequate opportunities and facilities for proper development. Despite several constitutional safeguards and various legislation child labour is still remaining in India. It is found that the practice of child labour is very old in India. It has been existing since the time immemorial in one form or the other. It has assumed the character of a serious social problem and no suitable remedy has been traced out so far to curb this evil.

There are so many rights and duties of the man for example, legal rights natural rights etc. The expression "Human Rights" is a recent development in legal fields in India as well as in the whole world since 18th century, in other words it can be said that "Human Rights" are one of those rights which have been guaranteed by our Constitution and other by laws, as it may be natural rights, individual rights, fundamental rights and personal rights etc.

Today Human Rights should be recognized as central to the entire child labour issue. It has been affirmed and repeatedly by the national and international community during the last three decades. They expressed the values and principles which constitutes the foundation of freedom, justice and peace in the world. As they are as centrally relevant to the child labour issue. Child labour constitutes the violation of the

rights of a child referred in the Charter of the United Nations and enunciated by the Universal Declaration of Human Rights. In order to suppress it, a convention was concluded for the elimination of child labour throughout the world, consequently International Labour Organization [ILO] was setup in 1919 to formulate guidelines and to improve the working conditions of children.

The United Nations General Assembly adopted a resolution proclaiming 1979 as the "International Year of the Child" with general objective of promoting welfare of children which has once again focussed the world attention on the problem of child labour.

After 10 years of negotiation, Convention on the Rights of the Child was finally adopted by consensus of the General Assembly on 20 November 1989 as stated by the Assembly President, Joseph N. Garba "the rights of the child have now gone from a declaratory statement of purpose into what will become a binding piece of International Legislation."

Executive Director of UNICEF James P. Grant hailed the convention as Magna Carta for Children, the Convention has defined a child as every human being below that age of 18 years.

In India, the first Act. relating to child labour was passed in 1881, which only provided for the regulation of the working hours of children below 12 years of age. This Act. was applied only to units having 100 or more workers and using mechanized power. In 1891, another Act

was passed which applied to units having 50 or more workers. There are several laws passed after independence e.g. The Factories Act, 1948 the Mines Act, 1952, etc. regulating the employment of children in various occupations which were purported to protect the health, safety etc. of children, recognising the need for special protection to the children, few provision in the Articles 15 ,24, 39, and 45 of the Constitution of India were incorporated to that end.

Thus, due to global developments it was necessitated to bring out a comprehensive enactment on these subject, the Child Labour (Prohibition and Regulation) Act, 1986, came into existence.

The present work is exclusively concerned with the rights of the child, policies, problem of child labour in relation to human rights. The work presents the role of human rights in eliminating the child labour and it deals with the International Programme for the Elimination of the Child Labour (IPECL).

The present work is divided in to the six chapters.

1. Chapter first is related to the historical background meaning, definition and various causes of child labour.
2. The second chapter deals with the meanings, nature and concepts of human rights, it discusses various convention relating to the rights of the child.

3. Chapter third, examines the provisions of child labour legislation passed before and after the independence. There are till now fourteen major legislation dealing directly with the employment of children in the hazardous or in non hazardous industries and provide legal protection to child workers in various occupations. At present, the Child Labour(Prohibition & Regulation) Act, 1986 is the main law relating to employment of child labour.
4. Chapter four, deals with constitutional provisions relating to the welfare of the children.
5. Chapter fifth, deals with the National and International perspectives. It further deals with the government policies for the elimination of the child labour. It also deals with the government policies under different heads like national policy on child labour and project to open up minds of working children.
6. Chapter Sixth, deals with significant role of judiciary in elimination of child labour in India. Lastly deals with conclusion and suggestions.

CHAPTER -1

1. HISTORICAL BACKGROUND

2. MEANINGS AND DEFINITIONS

3. CAUSES OF CHILD LABOUR

CHILD LABOUR: A BRIEF STUDY

1. Historical Background

Child labour is not a new phenomenon to our stage but it has existed from time immemorial. It is a social problem throughout the world. Child is said to be the father of man and citizen of tomorrow. In India family enjoy little recognition without child. Children are the hope of parents and future of nation and thus given to adequate opportunities and facilities for proper development. Despite several constitutional safeguards and legislation, child labour is still remain in India. It is found that practice of child labour is very old in India. It has assumed the character of a serious social problem, and no suitable remedy has been traced out to curb this evil. The social scenario, however changed radically with the advent of industrialization and urbanization. Urbanization and industrialization have brought changes in the Indian social system. The change in the value system of our society has led to the neglect of their children. Thus, families lose their control over children who either work or join delinquents or start begging to meet their personal or family expenses.

I- Child Labour in Ancient India:

The reality of ancient India was that the children of slaves were born as slaves and died as slaves unless the master was placed to monument them¹. Children slaves

1. Jinesh Chandra “ Child Labour in India” Ashish Publishing House, New Delhi, (1978)
P, 48.

could be purchased and sold like commodities. The parents used to sell the services of their children, were employed in agriculture and domestic services.

II- Child Labour in Medieval India:

Child labour in medieval India too remained in existence in large scale. It is revealed that the children were exploited by the rich land owners and used them, to help them in their economic activities.

III- Child Labour in British Period:

The problem of child labour underwent a dynamic change in British era. The new economic force unleashed by capitalism destroyed the family based economy. A large number of labourers in medieval India remained in existence were displaced due to mechanisation of agriculture. The farmers were alienated from their home. They become wage-earning labours. The poverty made possible a situation in which a child had to be introduced in the labour market². However the child labour welfare did not receive much attention during British era. There was no integrated approach about the well being of child labour. They were touched incidentally in both civil and criminal legislation. There were no specific statutory measures for the care, protection and welfare of the child labour, and the consequences, was that the employer exploited them on a wider scale to accomplish their selfish ends. There are few examples where British Government

2. Elias Mendelievit "Child labour" International Labour Review, Sept-October, 1979, Vo. 19, No. 5, p.212

enacted little protective legislation for child labour in India. The first attempt to regulate the employment of children and their working hours was made through Factories Act, 1881. It was the result of children and their working condition, which was very bad. Some enlightened employers who were really devoted to the cost of child labour welfare and made efforts to bring the factories Act 1891 in existence. As a consequences a Factory Commission was set up in 1890 which led to the passage of the Indian Factories Amendment Act 1891. It also failed to achieve its objectives and it re-enacted further and Factories Act 1911, came into existence which provides regulatory provision to the child labourers in any factory who have not completed fourteen years of age.

In 1901 Mines Act was passed which prohibited the employment of the children under twelve years of age. The existing Act was considered as inadequate, hence a new Mines Act was enacted in 1923, to give effect to the hours of work. This Act fixing the working hours for above ground at sixty hours in a week and for under groundwork at fifty-four hours in a week.

The British Government appointed the Royal Commission on Labour in 1928, after thorough study, The Commission in its report publishing in 1931, made general recommendations for amendment of Labour legislation with respect to plantation legislation in particular. The Commission recommended the enactment of new laws dealing with recruitment, emigration and proper administration of law. Further in 1933, one more step was taken to prevent the exploitation of children when the Children (Pledging of Labour) Act, 1933, was enacted by the government on the recommendations of the Royal Commission on Labour. In 1923 Mines Act was enacted and it was further amended in 1935, regulating the working conditions and hours of the child workers in

mines. The Amended Act strictly prohibited the employment of adolescent i.e. the young between 15 to 17 years of age.

The British Government enacted the Employment of Children Act 1938 with the objective to weep out the evil of employment of children in workshop, which was not covered by the Factories Act 1881. This Act was again amended in 1939, and prohibited children under 12 years from working in workshop connected with beedi making, carpet weaving, manufacturing of cement, cloth printings, dying and weaving, manufacturing of matches, explosive and fire works, mica cutting and splitting. The British Government enacted many children welfare legislation but all these enactment failed badly to achieve the goal the elimination of the evil of the child labour, it is in this context the Labour Investigation Committee, in its report 1946, highlighted that the main cause of the failure of this social evil was that the legislature could not imagine the nature and the depth of the child labour and hence every provision fell short to deal with the situation and poor children were still working in various hazardous occupation which are injurious to their health, life and growth.

IV- Child Labour at Present

The phenomenon of child labour, which is consequence of the exploitative systems operation at the national and international levels, not only closes the future of millions of children in the third world countries, but it also restricts the development prospects of these drastically. The existence of child labour is a threat to overall world development, and to the solidarity and peace in the world. The employment of children in poor and over populated country like India is one of the most complex problems of the time. This problem can not be viewed in isolation, because it is symptoms of decease,

which is spread at various levels. Constitutionally, regard has always been paid to the child. The relevant provisions of the constitution regarding employment of the children come under the category of fundamental rights, which envisage no discrimination against women and children. "Child and youth are protected from exploitation and against moral and material abandonment".³

This chapter offers a brief assessment of the deleterious impact of child labour on the society, nations and world as a whole.

I- Beedi Industry:

Bihar is one of the states with maximum child labour in India. There are so many beedi-manufacturing industries in Murshidabad (West Bengal). A survey conducted in every where in the state, including Calcutta, revealed that most of the people were found suffered from tuberculosis, bronchitis and other health hazards⁴.

II- Bangle Industry:

The glass bangle industry in Firozabad is another example where the children are employed. The temperature inside the factory about 40-50 degree centigrade, which makes working in summer unbearable. Many workers suffer from asthma bronchitis and eye diseases. Firozabad gets high rank in the incidence of tuberculosis among industrial cities.

3. Article 39 (f), The Constitutions of India, 1950.

4. The Hindustan Times, New Delhi, December 1996 p.13

III- Handloom and Carpet Weaving:

Handloom and Carpet industries provide many employment opportunities for the utilization of child labour, Mirzapur and Bhadoi where the industry employees only boys. Rajasthan has the unique distinction of employing girls in the carpet industries. And it is the situation as such in the industry. Which is a matter of grave concern. The people is unaware of what harm is being done to the girls when they work on the looms for long hours, bending their back and inhaling the woolen flaps. Many of these young lungs are subject to asthma and primary tuberculosis as a result.

IV- Gem Industry:

The National Safety Council of India, in a recent study on the health and safety of working children, in gem polishing industry of Jaipur, has estimated that about 13000, children below 14 years are employed in this industry. Accordingly, the employment of children is dominant in small house hold units which the work is contracted out by large units or exporters. It is found that due to the nature of jobs such as polishing and cutting gems, these children suffers from eye defect prematurely, consequently, many of these children are not only unemployed but also unemployable by teenage⁵.

5. The Hindustan Times, New Delhi, July 3, 1997, p.5.

V. Fire Crackers Industry:

In Sivakasi, there are many fire works industry, holds the dubious distinction of having the worlds largest concentration of child labour- as estimated 125000 many of whom are in the 3 – 4 age group. They work long hours in unhygienic conditions for a mere Rs.10, a day, and are invariable victims of tuberculosis⁶.

VI. Catering Industry:

A majority of child labour is employed in the unorganised sectors. There is no time schedule for rendering services by children working in hostels, restaurants, tea stalls, dhabas etc. and quite often it is seen that children are working round the clock, in such organisations under dehumanizing employment conditions⁷. India has the largest number of child labourers in the world the 1991 census says there are 11.28 million working children in the 5 to 15 age group. The estimated number of bonded child labourers is close to a million⁸. About 92 million children are neither enrolled in school nor-accounted for in the labour force. They are categorised as “now where children”. Only 60 percent of the Indian children (the total child population below 14 is 380 million) reach grade V and many of those did not complete primary education and can not read or write.

6. The Hindustan Times, New Delhi, October 2, 1997, p.3.

7. R.N.Pati, “Rehabilitation of child Labour In India, 1991,p.30.

8. The Hindustan Times, New Delhi, Feb. 20, 2000, p.17.

About 53 percent of children below five are undernourished. One is every 10 children suffers some disability. The Country has some 400,000 child prostitutes. Child prostitution is increasing by 8 to 10 percent every year⁹.

CHILD LABOUR IN INDIA¹⁰

Industry	Location	Number of Children Employed
1. Match & Fire work	Sivakasi (T.N.)	50,000 – 80,000
2. Stone quarries	Kerala	
	Markapur (A.P)	
	Mandsour (M.P)	20,000
3. Mines	Meghalya	28,000
4. Fishing	Kerala	28,000
5. Handloom	Trivandrum	28,000
6. Brass Industry	Moradaba (U.P)	14,000
7. Lock Industry	Aligarh (U.P)	10,000
8. Glass Industry	Ferozabad (U.P)	50,000
9. Gem polishing	Jaipur (Raj.)	13,000
10. Carpet Weaving	J&K	10,000

9. Ibid.

10. Source: Civil Services Chronicle, September 1995, p.11.

2. Meaning And Definition:

Child labour consist of two components:

(a) Child and (b) Labour

The former signifies child in term of chronological age and latter signifies the nature, causes, volume and income generation capacity. Child labour, however, can broadly be defined as that segment of the child population which participates in work either paid or unpaid¹. Child labour means the employment of children under a specific legal age².

The child labour is more meaningfully defined by the United States Department of Labour as, "The employment of boys and girls when they are too young to work, for hire or when they are employed at jobs unsuitable or unsafe for children of their ages or under conditions injurious to their welfare. It is however, any employment which deprives the children of their rightful heritage of the chance for healthful development, full education opportunities and necessary play time³.

Child labour means the employment of children under a specific legal age and it is the use of children to work in factories and other places of employment.⁴

Section 2 (c) of the Factories Act 1948, child means a person who has not completed his 15 years of age.

1. Encyclopaedia of Social work in India, Vol. I (1987), p.78.

2. The New Encyclopaedia Britanica, Micropadia, Chicago Press Vol. II, 15th Ed. (1978), p. 329.

3. Encyclopaedia America, Vol.6 (American Corporation, New York (1976), p.461.

4. The World Book Encyclopaedia, Chicago Press, Vol. III (1983), p. 363.

V.V. Giri has distinguished two senses of the term "Child labour". The term child labour is commonly interpreted in two different ways: First as an economic practice and secondly as a social evil. In the first context it signifies employment of children in gainful occupations with a view to adding the income of the family. In the second context that the term child labour is more generally used. In assessing the nature and extent of social evil. It is necessary to take into account the character of jobs on which the children are engaged, the dangers to which they are exposed and the opportunities of development, which they have been, denied.⁵

The Gurupadswami Report of Committee of Child Labour, 1979 defined child labour as follows:

However, we must take a distinction between child labour and exploitation of child labour, both is a problem through of different orders. Child labour as distinguished from work experience has mostly negative attributes. It can now be asserted on scientific ground that works as direct fulfillment of child's nature abilities and creative potentialities are always conclusive to his healthy growth. But work when taken up as means for the fulfillment of some other needs, become involving in characters and deleterious in its impact. Labour is work of taller type irrespective of the degree of strain or exploitation involves in it. Work by its very nature is enriching the basis attributes of work are purpose plan and freedom. When they are conspicuously absent, work becomes labour. Labour in case of child, especially

5. V.V. Giri, Labour Problems in Indian Industry, Asia Publishing House, Bombay, 3rd Ed. P. 360.

is harmful because the energy that should have expanded on the torturing of talent powers is consumed for purpose of bare survival child labour assumes the character of social problem in as much as it winds, assets on distorts the natural growth processes and prevent the child from attaining his full blown manhood. When the business of wages earning or of participation in self or family support conflicts directly or indirectly with the business of growth and education, the result is child labour the function of work in childhood is primary developmental and not economic children work. Then as social good, in direct anti thesis of child labour as a social evil.

The term child labour not only applies to the children working in industries but also to the children working in all form of non-industrial occupation like restaurant, hotels, dhabas, houses and agricultural operations etc. which affects to their physical, mental, moral and social development. Justice P.N. Bhagwati and Justice R.N. Pathak of the Supreme Court of India rightly observed ⁶ in *Sheela Basre V/s Children Aid Society and Others*.

“If there be no proper growth of children of today the future of the country will be dark.”

It is the obligation of every generation to bring up children who will be citizen of tomorrow who will hold the country's banner high and maintain the prestige of nation. If a child goes wrong, for want of proper attention, training and guidance, it will be indeed a negative factor. Every society therefore, must devote full attention to ensure that children are properly cared for and brought up in a proper atmosphere, where they could receive adequate training, education and guidance, in order to see that they may be able to have the rightful place in the society when they grow up. There are both central

6. AIR, (1987), S.C., p. 52.

and states enactments on child labour, The former covering mainly employment in industries and mining and the latter covering shops and other establishments. At the International level there are 'International, Labour Organisation, conventions and recommendations. India is a party to the I.L.O. conventions. India has ratified several I.L.O. conventions some of the conventions have special provisions for than those to be followed by the development countries.

3. Causes Of Child Labour

The problem of child labour is a major problem in the world nowadays. Several International and National Agencies are involved to deal such problem. It is a socio-economic problem. Child labour is the one of the labour forces used by the industries in our country. It is a cheap labour source. Industries using child labour encourages it and they are not ready to take remedial measures to reduce child labour. The Governmental and Non-Governmental Organisation raise their voice to curtail child labour in our country because it becomes a social issue. Children working in factories give up their basic education and violate the fundamental rights to education. So the level of illiteracy increased in our country and social development will become daydream. There are so million child labourers in our country.

Child labour has created a serious economic problem to our nation. The western countries, particularly USA have started that they are not going to import Indian goods involving child labour in the process of manufacturing. Their complaint is that the Industries exploit child labour and to provide low wages and poor government to study the child and find-out remedial measures to keep the children away from exploitation.

It has been stated that “Child labour is no longer, a medium of economic exploitation but is necessitated by economic necessity of the parents and in many cases *that of the child himself.*” In India a large number of children were employed in factories and their employment still continues despite various provision are being made to restrict the evil practice. The reason for employment varies from culture to culture or from group to group in the same culture or society. The employment practice is affected by several factors such as education, economic standard of living, social condition and prevailing occupational traditions. However, it is seen that child workers do accept jobs at the early age to supplement their family income on to get ready for adult hood and equip themselves for future avocations. They are trained in their family occupation and economic necessity is the major causes of child labour. But there are some other causes of child labour also which are described below.

I. Education:

Existing system of education is also not encouraging the poor to educate the children, as the present education system is not job oriented and it is costly affair where the poor cannot afford to meet the incidental charges for study material and clothes etc. In the constitution there is a provision for the free and compulsory education for all, upto 14 years of age but even after 53 years of Independence neither the provision has been implemented, nor parents have so far as understood their responsibility to achieve this objectives, by sending their children to school on the contrary, children are motivated to join the labour force to meet their own as well as family expenses. It is found that even in areas with educational, facilities parents of poor illiterate and traditional families send their children to labour market in the absence of a system of compulsory education.

II. Economic Necessity:

India is a developing country. India has the largest number of child labourers in the world. The 1991 Census says that there are 11.28million workers children in the 5-15 age group the estimated number of bonded child labour is close to a million. There are 40% people below poverty line.¹ In the rural area slums and backward areas reeling under tremendous economic burdens, parents, have forgotten their responsibility towards their children. One of the main reason for neglect of these children by their parents, is the poor economic condition, They have to borrow money to make a living and this continues usually from generation to generation. The dreadful poverty stands as the principle cause which dangers the poor and innocent children into the various circle of child labour particularly in the rural area, because of low level of per capita income and poverty, parents are sending their children to do jobs, mainly to supplement their family income, because of poverty, Even the school going children are forced to leave their academic career and attend some sort of work to earn their livelihood. According to International Labour Organisation.

The problem of child labour is the problem of maintenance of the child and providing wages, so that they can maintain their families in keeping with an adequate standard. It is also found that unemployment of an adult member of the family is a motivating factor for employment of children at the early age.

1. Hindustan Times, New Delhi, Feb 20, 2000 p.17.

III. Population:

In a developing countries like India, where resources are less than the minimum requirement of people. The family planning measures in India failed disastrously in poverty belt and the result is large size of families or population, It is difficult for a single person to earn for such a big family. However, in such traditional families children are considered God-gift and parents also hold opinion that god has given them children as such he will provide them with food. Side by side they think extra children mean extra income in the family but they forget that one physically, mentally and intellectually able child is better than a hundred of problem child.

A scientific study on survey of 200 families who sent out their children for labour was conducted in four villages of Rewari Tehsil of Haryana. The data revealed that among child labourers 70.7% were boys and the rest girls. Parents were asked whether they preferred to send boys or girls, while 91.5% preferred sending boys, only 3% mentioned girls and 5.5% were non-committal.² The study also sought to assess the role of family size in child labour. It was learnt that the maximum numbers 66% of children came from the most prevalent family, size in that area of 6 to 8 members whereas small size of families of 3-5 members contributed 34% of the population.

This indicates that the small family size reduces the necessity of sending children for labour in rural areas.

2. Dr. Satish Chandra and Lali Devi, "Child Workers in Haryana", Social Welfare (October 1979) pp.35-36.

An UNICEF study on young children also propounded that family size is larger in rural areas particularly among the low-income group. This gives rise to higher dependability ratio on child to supplement the poor resources. This often makes parents feel that the more children means more gain, in this respect the employment of children becomes directly connected with the desire for families to have a number of children, for the more. There are the more money they earn.³ As a result large families with comparatively less income can not have the happy notions in their mind. They can not give sheltered childhood to their children. If a family is limited and well planned there will be no question of sending their children to the labour market and the children can be carefully educated. Thus parents cannot provide all facilities which a person having one or two children can provide. Therefore, it is clear that population or large family is the most important factor in contributes the child labour.

IV. Poverty:

Poverty is the main cause of the child labour. More population or large family is the basic root or cause for child labour. Due to poor income, poor standard of living and large family, parents are not able to put their children to school. The parents on account of poverty are faced the question as to whether they should send their children to schools or to send them for the labour to increase the income of their starving families. Poverty forces the parents to send their children for the labour because increase in their income is essential for the survival of the family.

3. Padmini Sen Gupta, 'Child Labour as a Social Problem, Its Causes, Effects and Consequences', Social Welfare, (Feb. 1976), pp.1 to 2.

As Professor B. Juyal, A sociologist, says: poor parents send away their children as a means of playing of a debt to a contractor. For other parents, it is simply a matter of survival, As Tayyab Ali, who was the carpet weaver for 35 years put it: it have taught the skill to 26 boys by now. I did not want my son to become a weaver. But I have not forced him to do it. We will other wise strave.⁴ Disease and other contingencies may need extra money and the employment of children is resorted to as an easily accessive method to bring money. A seminar on the subject organised by National Institute of public cooperation and child development, New Delhi, on November 25-28 1995, also come to the conclusion that million of families were below the poverty line and they had to deploy their children in the labour market in order to else out a bare subsistence. In big cities like Bombay, Madras, Delhi and Calcutta, a large number of migrants are seen. The employment of their children in a firm proof economic helplessness and poverty. Mass poverty is measured constraints in the way of real implementation of the provisions of labour laws. Poverty in India exists mainly due to non-proper use of available resources. Poverty of the masses has become so complex that one needs to adopt a multidimensional approach to examine it. In India 40% of the population is living below poverty line or living on the bare minimum subsistence level.

4. Ramesh Menon "The wages of Innocence", India Today Magazine, New Delhi (Feb. 15, 1985), pp. 106-107.

V. Illiteracy:

In India most of the people are illiterate. Poor parents not think of the future of their children they believe in earning by children, rather than there all round development through school education and proper care. “ Child labour is prevalent extensively in the lower socio-economic group because of lack appreciation on their part of the role that education plays in improving life and living condition of the people”. Economic justification cited for child labour are either invalid or at best weak. The major reasons being that the social cost and ultimately, even the economic cost borne by child and economy, as a whole is too high. Child labour must be seen a less phenomenon of poverty and more of social attitude and sensibilities. This is evident from the fact, that the developed world tackled this problem much before their economic grew strong and even in the developing countries, where this problem is relatively non existent. Despite improvement in literacy rate from 5% in 1901 to 52.11% in 1991. The gross number of illiterate had increased up during this period from 225 million to 437 million, 82 million children between the age group do not attend school. In the case of *Mohini Jain Vs State of Karnataka*⁵ the Supreme Court declared that all Indians have a Fundamental right to education at “all levels” This new fundamental right has been held to be part of fundamental right to life under Article 21 of the constitution. With this judgement the Supreme Court has converted the non-enforceable right to education in the directive principles of the Constitution of India into an enforceable fundamental rights. Now, million from their respective state government, Municipal Corporation, Panchayat and

5. AIR 1992, SC 1858, also see *Unni Krishnan V. State of A.P.*(1993), 1 SC 645.

Zila Parishad on their right by taking those managing state and local governments to the court for securing right. Between 1961 and 1981, the number of adult illiterates in India increased by five millions per year from 333 to 437 millions. Majority of this illiterate population belongs to the lower socio-economic strata of the population. These people are only concerned with the present and they deliberately try to escape from the stress and strains of worrying about the future. They are placed with what the gain by the earnings of their children. Majority of the parents of child labour are illiterate. The large number of parents and guardians are not aware of the importance of education.⁶

✓ VI. Cheap Labour:

Child labour is a source of cheap labour. Domestic employment as little servants is still common in the country. They provide cheap labour and many middle class families especially among the lower income groups, employ little boys and girls from 8 to 14, an age forbidden for employment. A small wage and food is given and since the child needs to fill his stomach, and works and at times shares his food with parents and certainly dutifully hands over his meagre salary to them. Perhaps it is a fault on the part of employers to take advantage of cheap labour, but the fact remains that economic condition to encourage such juvenile labour. Industry is far more organised than agriculture in the employment of children and has set and passed rules enacted with

6. Dr. Amar Singh & Raghu Vinder, "Cause of the Exploitation of Child Labour in India", S.C.J., Vol.3,(1993).

vigour.⁷ Mostly employers think that a lot of work can be done by the children in their establishment and this labour of children very cheap labour in comparison to that of men. By the age 14 to 15 he has most of the finer polishing techniques but earns about Rs. 60 to 200 a month where as an adult would get Rs.500 to 600 for the same job.⁸

As far as wage structure is concerned, there is no uniform wage structure. The method of payment is by and large the piece-rate system. There is no fixed wage rate and different job/processes are paid according to different rates. For example in Lock Industry of Aligarh, for cutting a key-hole in the lock case, called 'dibbi' and also fitting the key, a child earns Rs. 3 per thousand and he can complete, 1000-1500 holes in a working day. Sometimes a child is paid 30-50 paise per gross. Likewise, as electroplating unit, in an 8 to 10 hours working day a child could tie 1000-1500 locks / handles on copper wires, for this he is paid RS.2 or 3 per thousand the rate is fixed at 30 paise per gross.⁹ In the match industries of Sivakashi children paid 15 paise for fitting each frame and they earned Rs.3 to 7 a day and foreman got a monthly salary of Rs. 250.¹⁰

-
7. Dr. Satish Chandra and Lali Davi "Child Workers in Hariyana", Social Welfare (October 1979), p.p.35-36
 8. Neera Burra, "Learning without Earning", H.T.Sunday Magazine New Delhi. (November 5, 1987).
 9. N.Burra,"Exploitation of Child Workers in Lock Industries of Aligarh", Eco. & Pol. Weekly, New Delhi (July 11, 1987).
 10. Smith Kothari "There's Blood on Those Matchsticks ". Economic and Political Weekly, New Delhi (June 2, 1983).

In the glass factories of Ferozabad, each of these working must be blowing into shape thousands bulbs or glass tumblers per shift. They are paid Rs. 16 per shift i.e. these paise per minute of torture, risking life, the wages actually paid may be less. The blowers hand over the labias with the shaped production its tip to the child workers in the group nine to 12 per ching on the planks near the blower's feet they are paid Rs. 10 per shift.¹¹

The carpet Industry took a quantum jump in 1975-76. The opportunity came large as a result of the sudden crash of the Persian carpet Industry in the wake of the 'oil boom' and the modernisation drive of the Shah of Iran. So government launched a 'massive' training programme for children in carpet weaving. The quality of carpet is determines by the numbers of knots per square inch or centimetre. The 'nimble fingered' argument comes in here. The rise in the quality of carpets and a monopoly share of the export trade in carpets, also contributed to the rapid infusion of child labour.¹² Usually the factory owners offer them work at a monthly rate of at least Rs. 150-200. Physical capacity to work and earn increases with growing years. For example in the powerloom, initially, the child aged around eight is made to work as trainees without wages. Depending on the whim of the employers, the child starts earning a wage of around Rs. 40 a month. In the third year of his wage is increased to about Rs. 60 a month and after around four years to Rs. 90. Children who weaver Banarisis saris with zari border can earn Rs. 90-100 a month.

11. Sheela Barse, "Children playing with Fire Glass Factories of Ferozabad-I" Indian Express (April 5, 1986).

12. B.N. Juyal. "Who wants it": 350 Seminars (Oct.1988), p.22.

A child labourer earns half of the wage of an adult doing similar work for the same length of time.¹³ In the case of the gem, polishing industry of Jaipur children are engaged ostensibly as apprentices but in fact, provide cheap labour. The learning process takes anything up to five or seven years and the child begins work at the age of six or seven. During this period child does not get paid regular wages but is occasionally given a rupee so that he continues to be interested in the work. The general pattern for full time child workers is that in the first one-and-a-half years the child gets no wages-not even in kind and he works for at least 10 hours a day. During the first year, he learns to attach unpolished gems on sticks for polishing, fetches and carries for his master, does domestic work, cleans premises and so on. By getting a child to do this work, the Ustad saves on the wages of adult workers. By engaging a child to do the entire running around and some unskilled work as well, he saves around Rs. 150 to Rs. 200 a month. In the second stage, when the child has worked for a year and a half, he is shown how to grind one facet on a stone, besides continuing to do domestic work. This goes on for three or four months. Sometime, the Ustad stretches wages. After two years, the Ustad starts paying the child Rs. 50 a month and occasionally gives him old clothes, tea and sometimes-even food. In the second stage, the child does work worth Rs. 250- Rs. 300 a month, once the child has spent three or four years and has started learning to make more facets, he is paid at least Rs. 200-400 to the Ustad. By this time, he may get Rs. 100 a month and old clothes and food, by the age of

13. Ramesh Menon, "The Wages of Innocence" India Today, Magazine, New Delhi. (Feb. 15, 1986) p.p.106-107.

14 or 18 he has learnt most of the fiber polishing techniques but earn about Rs. 150-200 a month. Where as an adult would get Rs. 500 to 600 for the same job. It is at this stage that the ustad find it difficult to hold on to the child on the pretext of training. At 14 or 16, a child who has learnt some skills can do about 30% more work than adults.¹⁴

According to 1981 census, 63.5% of child labor force in India worked in cultivation, 9.6% served as agricultural labourers, 16% worked in dairy and livestock, 8.7% were engaged in house-hold industries, 3.6% worked in organised industry, 2.30% were engaged in construction activities, 2.7% worked in trade and commerce, 6.14% worked as domestic servant and less than 1%.

VII. Greedy Contractors:

It has been found that child labor is the cheap labor so the contractors engages the child in their establishment. Contractor gives low wages to the children, children worked more in comparison of the adult workers so contractors finds more income from their industry.

VIII. Uncaring Parents:

It is most important cause of the child labor, most of the parents does not care of their children, they do not bother about the children's problem, they do not send their children to the school and create more children they thinks that if they more children, they get more income.

14. Supra note -7.

IX. Low wages:

Beside to the employer child labor is profitable, as the wages of children are small, their complaints few and they accomplish in some industries and occupations as much as an adult. The employers therefore, do not, hesitate in exploiting the children in their own interest without any consideration for their needs for healthy growth and development.

Neera Burra writes, 'Evidence indicates that the child's wages.... is a third to half that of adults for the same out put, with the child working for as many, if not more, hours than the adults.'¹⁵

X. Indebted Parents Pledging Child's Labor:

Defined as a "traditional relationship" between the worker and the employer in India, children are packed off to employers in repayment of debt incurred by their parents or guardians, because parents need credit and the child is an easy pawn.

Ironically, the child has little to do either the debt, he is neither incurred it on used it but he is the target of both the employers and the parents, either to pay for the treatment of an illness, or to provide dowry, and often just to "help put food on the table". Childhood is pawned, rather bartered for the needs of the family. The debts range from a meager Rs. 700 to a maximum of Rs. 7500 for which a child's services are transected. The average amount 'loaned' is Rs. 2000 in exchange for a bonded 'child labour'.¹⁶

15. Myron Weioner: 'Child Labor in India' 'Economic and Political Weekly' New Delhi (Nov. 9-16, 1996). P.3007

16. The Hindustan Times, New Delhi May 5, 1997, p. 20

Children who are sold work long hours for the several years in an attempt to pay of parent's debt. But due to the exorbitant rates of interest which are charged, as against the abysmally low wages paid, the vicious circle continues and, more often than not debt fail to cleared, even as the child reaches adulthood.¹⁷ As they reach maturity some of the children may get released by the employer in exchange for younger children may release some of the children. Many other pass the debt on, sometimes even a higher amount of their own children.¹⁸ While there are difficulties in counting child laborers, according to the Ministry of Labor there were 17.5 million children working as laborers in the last decade. In 1994 there were 100 million children who were set out of school, as per the Bangalore Center for concern for working children figures. Meanwhile, the UNDP, and Human Development Report last year also estimated the number of child labor between 14-100 million in India, reflecting the differences in counting.¹⁹ The ILO report 1996, on its part, concluded that the number of full-time child workers increased from 13.9 million in 1951 to 14.5 million ten years later but registered a 12 percent decrease in 1991. The report also indicates that full time and marginal child labor is increasing in urban areas and decreasing in rural areas, although the absolute number of child laborers in rural areas is higher than in urban areas.²⁰

17. Ibid.

18. Ibid

19. Ibid

20. Ibid

In childhood in India's statistics tells us that 150 million women and children in India live in speakable poverty. 50 million children work full time, 18 million work in hazardous labor But million static do not stagger us. Number means nothing and most off us have learned to gloss over these facts. Shut them out-or they would overwhelm us and make waking difficult.²¹

About those report terms as "now where children" who neither appear in official labor or education static's, it estimates that about 74 million children in the age group of 5-14 years are neither in schools not in the labor force. Consequently, the report concludes that the combined total of full-time child workers, marginal child workers and 'now where children' amount to over 90 million or almost 40 percent of the 5-14 years age group child population.²²

In India bonded labor is most common in agriculture, which employs bonded laborers both children and adults, in much larger number than all industries and services put together, agricultural, as per figure available, accounts for 64 percent of the bonded working population, 85 percent of the bonded working population and 81-87 percent of the population of bonded child laborers .²³

21. The Pioneer, Lucknow, August 9, 1997,p.13.

22. Supra note. 16.

23. Ibid.

CHAPTER- II

CHILD LABOUR

AND

HUMAN RIGHTS

CHILD LABOUR AND HUMAN RIGHTS

1. Nature and Concept of Human Rights:

Human rights can be generally defined as those rights which are inherent in our nature and without which we can not live human beings. Human rights and fundamental freedoms allow us to fully develop and use our human qualities, our intelligence, our talents and our conscience and to satisfy our spiritual and other needs. They are based on mankind's increasing demand for a life in which the inherent dignity and worth of each human being will receive respect and protection.

Human rights are some times called fundamental rights or basic rights or natural rights. As fundamental or basic rights they are those, which must not be taken away by any legislature or any, act of government and which are often set out by a constitution. As natural rights they are seen as belonging to men and women by their very nature. An other way to describe them would be to call them 'common rights', for they are rights which all men or women in the world should share, just as the common law in England, for example. Was the body of rules and customs, which, unlike local customs, governed the whole country.¹ Human rights are not created by any legislation, they assume the position of natural rights. Any civilized country or body like the U.N. must recognise them. They can not be subjected to the process of amendment even. The legal duty to protect human rights includes the legal duty to respect them.

1. J.E.S. Fawcett, The Law of Nations, (Allen Lane, The Penguin Press, London 1968), p. 151.

Members of the U.N. have committed themselves to promote respect for and observance of human rights and fundamental freedoms and International concern with human rights as enshrined in the United Nations Charter is not a modern innovation. It is infact, " heir to all the great historic movements for men's freedom to the enduring elements in the tradition of natural law and natural rights and in the most of the world's great religions and philosophies and the finding of contemporary science about interrelations of simple respect for human dignity and other individual and community values."² Before the adoption of the character of the United Nation the International Community could not determine the extent which the citizens of an individual states were to enjoy the civil rights according to its own constitution precepts. Under the traditional international law states were absolutely sovereign to do what they liked with their nationals.³ International law had nothing to do in the matter because the concept of sovereignty was such that an individual could not be the subject of international law.⁴

2. M.S. Mc Dougal and Behr, "Human Rights in the United Nations", A.J.I.L., V. 56 (1964). P. 604.

3. J.L. Brierly, The Law of Nations, Sixth Edition (1963), Edited by Sir Humphrery Woldock, pp. 291-92.

4. Stephen S. Good Speed, The Nature and Function of International Organisation, Second Edition (1967), p. 516.

2. U.N. Charter and Human Rights:

The Charter of the United Nations represents a significant advancement so far as faith in and respect for human rights is concerned. The appalling atrocities of the Nazis against the Jews and against other races during the second world war led to a strong movement for the international protection of fundamental human rights, and the charter contains numerous references to them.⁵ As a matter of fact, with the horrors perpetrated by Nazi and fascist leader still in their minds, the maker of the charter were determined that the rights of the individual be made an international concern.⁶

A.H. Robertson observed: "Human rights are mentioned for the first time..... in any international treaty (not counting the treaties for the protection of minorities concluded after the first world war, which related to the rights of special groups but not to human rights in general) because the drafters of the charter were ... looking behind the facts of war to its cause, this is to say, to the existence of dictatorship which makes wars possible".⁷ The provision concerning human rights run throughout the U.N. Charter "like a golden thread". Much of the credit for this goes to the determined lobbying by non-governmental organisations at the San Francisco Conference.⁸

5. J.L. Brierly, the law of Nations, Sixth Edition (1963), edited by Sin Hamphnery Woldock p. 293.

6. Supra note. 4.

7. A.H. Robertson, The law of International Institution in Europe (1961) pp. 2-53.

8. Humphery, The U.N. Charter and the "Universal Declaration of Human Rights" in Laurd (ed.). The International Protection of Human Rights (London 1967).

The delegates of some of the states at the San Francisco Conference were in favour of the adoption of even stronger provisions concerning human rights. An attempt, which proved abortive, was also made to incorporate in the U.N. Charter an International Bill of Human Rights.

3. Provision of the Charter Concerning Human Rights:

Human rights would occupy a significant chapter in any story of the United Nations.⁹ Their place in the original conception of the U.N. is underlined in the charter and there are as many as seven references in the preamble. The provisions of the U.N. charter concerning human rights provide a foundation for and an impetus to further improvement in the protection of human rights. They indicate the wide possibilities of the international recognition of human rights.¹⁰

With the exception of the pursuit of peace, there is no cause the United Nations to more closely identify with the cause of human rights. Concerning for human rights is woven in to the U.N. Chapter 'like a golden thread. Human rights would occupy a significant chapter in any story of the U.N.¹¹ Their place in the original conception of the U.N. is underlined and highlighted in the chapter and there are seven references,

9. Louis Henkin. The "U.N. and Human Rights", International Organisation. Vol. XXI, No. 3 (1965), p. 504.

10. L.Oppenheim, International Law, New York, Long Man Group & Co. Vol. I, English Edition (1970), p. 783.

11. Supra note: 9

- I. In the preamble
- II. Among purpose of the U.N. (Article 1. (3))
- III. Among the responsibilities of the General Assembly (Article 55 (c))
- IV. Among the objectives of the International Economic and Social Cooperation (Article 13 (2) set out in Chapter IX and X.
- V. Among the functions of Economic and Social Council (Article 62 (2))
- VI. As a responsibility of Economic and Social Council regarding setting up of a Commission for the promotion of human rights (Art. 68).
- VII. Among the objectives of the trusteeship system (Article 76 (c))

Each of the above reference is being briefly discussed below:

- I. The Preamble of the United Nations Charter begin with the words ‘WE THE PEOPLE OF THE UNITED NATIONS’ these words are neither superfluous nor have crept in the preamble incidentally. The framers of the charter were really serious and did not rest with the using of these words in the preamble but went on to give content to these words in numerous provisions concerning human rights (a) elimination of colonialism, (b) non-self governing territories, (c) economic and social cooperation, etc.

In this context the words “We the people of the United Nations” are very meaningful. They show the objectives, which the framers of the charter wanted to achieve. After having made this significant innovation in an international treaty, the preamble further reaffirms “faith in fundamental human rights, in the dignity and worth of the human persons, in the equal rights of men and women”.

II. Secondly - Article I (3) provides that it is one of the purposes of the UN “to achieve international cooperation in solving international problems of an economic, social, cultural or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion”. Thus Article I puts the promotion of respect for human rights on the same level as the maintenance of international peace and security as a purpose of the U.N.¹²

III. Thirdly, it is one of the responsibilities of the general Assembly to initiate studies and make recommendations for the purpose of “Promoting International Co-operation in the economic, social, cultural, education and health fields and assisting in the realization of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion.”¹³ The further responsibilities, functions and powers of the General Assembly, are set forth in chapters IX and X of the U.N. Charter.¹⁴

IV. Fourthly, with a view to the creation of conditions of stability and well being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of the people.

12. John P. Humphrey, “The International Law of Human Rights in the Middle Twentieth Century” *The Present State of International Law* (1973), p. 75-84.

13. Article 13 (1) (b).

14. Article 13 (2).

Article 55 (c) charges the United Nations to promote “Universal respect for, and observance of human rights and fundamental freedoms for all without distinction as to race, sex, language or religion. This provision is further strengthened by Article 56 under which all members pledge themselves to take joint and separate action in co-operation with the organisation for the achievement of the purposes set forth in Article 55. As pointed out by Ian Brownlie’s “As treaty provisions applicable to the organisation and its members these prescriptions are of paramount importance.”¹⁵ Article 55 is perhaps oblique-the United Nations shall promote. However, Article 56 is stronger and involves the members and the political and judicial organs of the United Nations have interpreted the provisions as a whole to constitute legal obligations. Thus Article 55 and 56 bind member states to observe and respect human rights. This view finds support from the interpretation of these provisions given by the World Court.

V. Fifthly – The charter of UN, has empowered the Economic and social Council to make recommendations for the purpose of promoting respect for, and obligation of human rights and fundamental freedom for all.¹⁶

VI. Sixthly – The charter imposes upon the Economic and Social Council to set up commissions in economic and social fields for the promotion of human rights, and such other commissions as may be required respect for the performance of its functions.¹⁷

15. Ian Brownlie, “Principles of Public International Law, Second Edition (Clarendon Press, Oxford 1973), p. 553.

16. Article 62 (3).

17. Article 68.

VII. Seventhly, one of the basic objectives of the trusteeship in accordance with the purpose of the UN laid down in Article 1 of the charter shall be to encourage respect for human rights and for fundamental freedom for all without distinction as to race, sex, language or, religion to encourage recognition of the interdependence of the peoples of the world.¹⁸ Thus the provisions of the U.N. charter concerning human rights provide a foundation and an impetus for further improvement in the protection of human rights.¹⁹ They indicate the wide possibilities of the international recognition of human rights.²⁰ There is however, a controversy as to whether the provisions of the charter concurring human rights create obligation on the members. Some writers have expressed the view that the "charter clauses only contain a pious injunction to cooperate and do not impose any obligation."²¹ On the other hand, number of authors contend that the charter imposes upon the members a moral and however imperfect, probably a legal duty.²² This argument seems to be acceptable and justified because "a pledge to cooperate in promoting at least implies a negative obligation not so to undermine human rights,

18. Article 76 (c).

19. Ian Brownlie, Principle of Public International Law Second Edition, (Clarendo Press, Oxford, 1973), p. 552.

20. L. Oppenheim, International Law, V.I, Eight ED. (Longman group U.K. Ltd, 1970), Edited by Lauterpacht, p. 783.

21. A.H. Robertson, The law of International Institution in Europe, 1961, p. 53.

22. Supra note 20.

for this South Africa's racial segregation policies appear to be out of harmony with her obligation under the charter.²³ However the charter did of course, greatly weaken the content of the charter clauses, and so an attempt was made to fill them out by drawing up in 1948 the "Universal declaration of Human Rights and Fundamental Freedom"²⁴ and with a view to implement.

- (a) The Universal Declaration.
- (b) European Convention on Human Rights,
- (c) The American Convention on Human Rights.
- (d) African charter on Human and people's Rights, 1981 and finally.
- (e) The International Convention on Human Rights were adopted.

4. U.N. Commission on Human Rights

The Commission on Human Rights established by Economic and Social Council in February 1996, is the nearest approach to permanent machinery for the supervision of the problem of protection of human rights. It is one of the six functional commissions established by the Economic and Social Council. Under its term of reference, the commission was directed to prepare recommendations and report on:

- (a) An International Bill of Human Rights.
- (b) International Conventions on Declarations on Civil Liberties, the status of women, freedom of information and similar other matters.

23. J.L. Brierly, *The Law of Nations*, Sixth Edition (1963), Edited by Sir Humphrey Waldock, p. 293.

24. Ibid.

(c) The protection of minorities.

(d) The prevention of discrimination on the basis of race, sex, language or religion, and

(e) Other matters concerning human rights.²⁵

The Commission's terms of reference are extensive, under them it may deal with any matter concerning human rights. The Commission makes studies and recommendations either on its own initiative or at the request of General Assembly or by the Economic and Social Council. The members of the commission are elected for three years' term and meets annually for a period of six weeks. All Commission decisions are made by a majority of the members present and voting. The Commission submits a report on each session to the Economic and Social Council. Originally the Commission consisted of 18 members. The membership was increased to 21 in 1962 and 32 in 1966. Subsequently, the membership was further increased to 43 and then finally to 53. In May 1982, India was re-elected for a new term of three years beginning from January 1, 1983. In order to assist in its work, the commission has established a number of subsidiary bodies, such as, the Sub-Commission on Prevention of Discrimination and Protection of Minorities, the Ad-hoc Committee on Periodic Reports, the Ad-hoc Working Group of Experts on Human Rights in Southern Africa and other working groups charged with particular task.

25. Ian Brownlie Principles of Public International Law, Second Edition (Clarendon Press, Oxford 1973), p. 554.

The Commission, as per its reference, makes studies, prepares recommendation and drafts international instruments concerning human rights. It also undertaken special tasks assigned to by the General Assembly on the Economic and Social right and the handling of communications relating to such violations .It also cooperates closely with all other United Nation bodies having competence in the field of human rights.

The Commission receives thousands of private complaints. It transmits them to the governments concerned and asks them to reply and comment thereon. It has played an active role in investigating alleged violence of human rights. The principal functions performed by the commission have been the preparation of the texts of the Universal Declaration of Human Rights, the Convention on the Political Rights of Women, drafts covenants on Human Rights supplementing the Universal Declaration. It also publishes yearbook on Human Rights. It holds its sessions annually and the performs important functions in the field of human rights. The special committee also proposed that the function of the Trusteeship Council be expanded to encompass the task of protecting human right in general, so that the council would become a "Human Rights and Trusteeship Council".²⁶ This suggestion merits serious consideration because the Trusteeship Council is one of organ which has almost completed its work and it may , therefore ,be made more useful and effective by conferring functions in respect of human rights. It is already empowered to promote human rights intrusteeship territories.

26. U.N. Monthly Chronicle, Vol. XIV, No. 4 (April 1977) p. 53.

It may be noted that the set proposal regarding the establishment of the office of the High Commissioner for Human Rights has already been accepted and implemented but the proposal regarding creation of Human Rights and Trusteeship Council” has yet to be accepted. It has also been propose by Philippines that Human Rights Commission be elevated to a full Council on a level with Economic and Social Council and the Trusteeship Council.²⁷

In its – fourth session held in Geneva from 1 February, to 11 March 1988, the Commission called for the highest priority to be given to completion, probably by 1989, of a comprehensive draft convention on the rights of the child.

In its 45th session held at Geneva from 30 January to 10 march, 1989 the Human Rights Commission approved 54 Article, draft Convention on the Rights of the Child after a decade of negotiations .As a result of this the General Assembly eventually adopted on 20th November 1989 an International Convention on the Rights of Child.

In its 46th sessions held from 29 January to 9 March. 1990. The Human Rights Commission covered a wide range of topics. Including the consequences of actions by irregular armed forces and drug traffickers. Child abuses. The rights of the victims of the Acquired Immune Deficiency Syndrome (AIDS) and The protection of rights minorities. Including indigenous populations and migrant workers.

In its 47 session held from 28 January to 8 March. 1991. The commission covered a wide range of topics including the Rights of Mentally ill Persons. Environment related issues, slavery and the sale of children .The commission also asked

27. Ibid.

the General Assembly to take steps to launch a third Decade to Combat Racism and Racial Discrimination to begin in 1993.

In its forty eighth session held from 27 January to 6 March, 1992 Human Rights Commission approved two new draft declarations on the rights persons belonging to national on ethnic, religious and linguistic minorities, and on protection of all persons from enforced disappeared. The Commission also adopted Programme of Action for the Prevention of the Sale of children, child prostitution and child pornography submitted by its Sub-Commission on the Prevention of Discrimination and Protection of Minorities.

The highlight of the 49 session of Commission of Human Rights from 1 February to 12 March 1993, was the adoption of a Programme of Action for the Elimination of the Exploitation of Child Labour. The Commission also reviewed specific human rights situations in more than 20 countries and territories and dealt with alleged violation in Southern Africa and the Middle East. Action was taken on Afghanistan, Albania, Cambodia, China and Cuba etc.

In its fiftieth session held from 31 January to 11 March, 1994 the Commission encountered both break through and difficulties in adopting its focus to the “new realities” of a “new era in human rights” than emerged during the landmark World Conference on Human Rights, held at Vienna in June 1993. In following up the results of the 1993 world conference, the commission reaffirmed the urgency of eliminating denial and violation of human rights, and decided to review annually the progress towards full implementation of the conference’s two important documents: -

(1) The Vienna Declaration and (2) The Programme of Action:

In its fifty – first session held from 30 January to 10 March, 1995, the U.N. Commission on Human Rights asked the General Assembly to consider convening a

world conference against “racism” racial and ethnic discrimination, Xenophobia and other related contemporary forms of intolerance.” The Commission welcomed religion workshops on human rights issues held in Asia and Pacific regions. The commission also welcomed the establishment of National Human Rights Commissions by India and Indonesia.

The work of human rights commission in several of its sessions has been indicated above in capsule form to show useful work that the commission has rendered and is still rendering in the field of human rights. The commission is the only body, which covers wide range of subjects in the field of human rights and operates, in universal scale. Besides its other wide-ranging activities it receives complaints of violations of human rights from citizens of members-states of United Nations.

5. Universal Declaration of Human Rights:

- I. Historical Background.
- II. Preamble of the UDHR.
- III. Provisions of the Declaration on Human Rights.
- IV. Influence of the UDHR (General)
- V. Influence of the UDHR on National Constitutions, Municipal Law and Court.
- VI. Legal Significance of the UDHR.

I. Historical Background

With a view to implement the provisions of the U.N. Charter concerning human rights, the General Assembly of the United Nations decided to prepare an International Bill on Human Rights with a view to achieve this, the General Assembly of

the United Nations requested the Economic and Social Council on January 29, 1946 to get study conducted by the Commission on Human Rights.

The Commission in its turn appointed in January 1947 a Drafting Committee for this purpose. At its first session held from January 9 to January 25, 1947. The Drafting Committee prepared a preliminary draft of an International Bill of Human Rights. The Human Rights Commission considered this draft at its second session held from December 17, 1947, and found that there were divergent opinions about its contents. The commission, therefore, decided to draft a declaration of general principles simultaneously with the draft convention containing specific rights treating legally binding obligations. Along with these, it was also decided to consider the question of implementation. These three documents: -

- I. International Declaration of Human Rights.
- II. The International Convent on Human Rights and
- III. Measures of Implementation.

Would thus from the International Bill of Human Rights. Three Working Groups were established by the Commission to prepare draft documents on the said topics. The Working Groups accordingly submitted their report to the Commission, which in its turn forwarded the report of the Working Groups to the Governments of Member States of the U.N. for their comments. The said comments were then considered by the Drafting Committee in its second session held from May, 3 to 21, 1948. The Drafting Committee redrafted the entire draft declaration and submitted the same to the Commission. For paucity of time the draft of the International Covenant on Human Rights could not be completed and the question of implementation could not be considered at all. The commission on Human Rights considered the report of the Drafting Committee along with

the draft declaration at its third session held in June 1948 and finally adopted the draft declaration of general principles and submitted the same to the Economic and Social Council, which in its turn adopted a resolution relating to draft declaration without a vote and submitted it to the General Assembly. The Universal Declaration of Human Rights¹ was finally adopted by the General Assembly by a vote 48 to nil 8 abstentions.² The Declaration has been hailed “as an historic event of the profound significance and as one of the greatest achievement of the United Nations. “The Declaration”....is the mine from which other conventions as well as national constitutions protecting these rights have been and are being quarried. As noted above, the Declaration on Human Rights was prepared by the Commission on Human Rights in 1947 and 1948 and was adopted by the General Assembly on December 10, 1948. When the Universal Declaration of Human Rights was adopted, it was a most eloquent expression of hope by a world emerging from the most devastating war in the history of human race. The experience gave the Universal Declaration a momentum that is reflected in the boldness of this document, destined for a world of peace where the right to live in peace has become a reality for all.³ On December 10, 1998, 50th anniversary of Universal Declaration of Human Rights was celebrated all over the world.

-
1. General Assembly Resolution 217 – A (III) of 10 Dec, 1948, General Assembly, Official Records, Third Session, Part I, Resolutions (U.N. Doc. A/ 810) P – 71 – 77.
 2. The eight abstentions were Byelorussia, SSR. Czechoslovakia, Poland, Saudi Arabia, South Africa, Ukrainian SSR, USSR and Yugoslavia.
 3. U.N. Chronicle, Vol. XXV, No. (March 1998), p. 46.

II. Preamble of the Universal Declaration of Human Rights:

The preamble of Universal Declaration of Human Rights which is as follows:

Where as recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of the freedom, justice and peace in the world.

Where as disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspirations of the common people.

Where as it is essential, if man is not to be compelled to have recourse, as a last resort to rebellion against tyranny and oppression, that human beings should be protected by the rule of law.

Where as it is essential to promote the development of friendly relations between nations?

Where as the people of the United Nations have in the Charter reaffirmed their faith in fundamental human rights, in the dignity and worth of the human person in and equal rights of men and women and have determined to promote social progress and better standards of life in large freedom.

Where as member states have pledged themselves to achieve, in co-operation with the United Nations, the promotion of the Universal respect for and observation of human rights and fundamental freedoms.

Where as a common understanding of these rights and freedoms is of the greatest importance for the full realization of this pledge.

Now, therefore,

The General Assembly Proclaims This Universal Declaration of Human Rights:

As a common standard of achievements for all peoples and of all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect of these rights and freedoms and by progressive measures, nationals and internationals, to secure their universal and effective recognition and observance, both among the peoples of member states themselves and among the peoples of territories under their jurisdiction.

III. Provisions of the Declaration on Human Rights:

The Universal Declaration consists of a preamble as noted above and 30 Articles covering both civil and political rights and economic, social and cultural rights. The preamble refers to the “faith in fundamental human rights in the dignity and worth of the human person and the equal rights of men and women”. Which the peoples of the U.N. have reaffirmed in the chapter of the U.N. and their determination to promote social progress and better standards of life in larger freedom. It also refers to the pledge taken by the member state “to achieve, in cooperation with the United Nations, the promotion of Universal respect for the observance of human rights and fundamental freedom.” Through the Preamble the General Assembly proclaimed the Universal Declaration of Human Rights. “As a common standard of achievements for all peoples and all nations, to the end that every individual and every organ of the society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the people of Member States themselves and among the peoples of territories under their jurisdiction”.

The preamble also notes the reasons which impelled the General Assembly to proclaim the Declaration of Human Rights and also the need for such proclamation and after having stated this in the preamble, the General Assembly goes on to proclaim the rights – civil and political as well as economic, social and cultural. It may be noted that the Declaration is neither addressed to nations nor to member states but to every individual. This is in keeping with the words “We the Peoples of the United Nations” with which the preamble of the U.N. Charter commences. The rights proclaimed in the Universal Declaration of Human Rights may be classified into following four categories.

- (1) General (Articles 1 and 2).
- (2) Civil and Political (Articles 3 to 21).
- (3) Economic, Social and Cultural rights (Article 22 to 27) and
- (4) Concluding (Article 28 to 30).

1. **General:** Article 1 of the Universal Declaration provide that all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a sprit of brotherhood. Article 1 thus proclaims the inherent freedom and equality indignity and rights of all human beings.

According to Article 2, everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political on other opinion, national or social origin, property, birth or other status.

2. Civil and Political Rights: The civil and political rights enumerated

under the Declaration include the following :-

1. Rights to life, liberty and security of persons.⁴
2. Prohibition of slavery trade.⁵
3. Prohibition of torture, cruel, in human or degrading treatment or punishment.⁶
4. Right to be recognized as a person before law.⁷
5. Equality before the law and equal protection of law against any discrimination in violation of the Declaration.⁸
6. Right to effective remedy by the competent national tribunals.⁹
7. Prohibition of arbitrary arrest, detention or exile.¹⁰
8. Right to full equality to fair and public hearing by an independent and impartial tribunal.¹¹
9. Right to be presumed innocent until proved guilty according to law in public trial.¹²

4. Article 3.

5. Article 4.

6. Article 5.

7. Article 6.

8. Article 7

9. Article 8.

10. Article 9.

11. Article 10.

12. Article 11, para 1.

10. Freedom from ex-post facto laws.¹³
11. Freedom from arbitrary interference with privacy, family, home, correspondence or attack on honour or reputation and right to protection by law against such interference.¹⁴
12. Right to freedom of movement and residence within the borders of state.¹⁵
13. Right to leave any country, including his own, and to return to his country.¹⁶
14. Right to seek and enjoy in other countries asylum from prosecution in respect of political crimes.¹⁷
15. Right to nationality.¹⁸
16. Freedom from arbitrary deprivation of nationality and right to change nationality.¹⁹
17. Rights to marry and to found a family and equal rights as to marriage, during marriage and at its dissolution.²⁰
18. Right to own property and freedom from arbitrary deprivation of property.²¹
19. Right to freedom of thought, conscience and religion.²²
20. Right to freedom of opinion and expression.²³
21. Right to freedom of peaceful assembly and association.²⁴

13. Article 11, para 2.

14. Article 12.

15. Article 13, para 1.

16. Article 13, para 2.

17. Article 14.

18. Article 15, para 1.

19. Article 15, para 2.

20. Article 16, para 1.

21. Article 17

22. Article 18

23. Article 19

24. Article 20

22. Right to take part in the government of his country,²⁵ and

23. Right to equal access to public service in his country.²⁶

3. Economic, Social and Cultural Rights:

Economic, Social and cultural rights are enumerated in Article 22 to 27
they are:

24. Right to social security and the to realization of the economic social and cultural rights indispensable for his dignity and the free development of his personality.²⁷

25. Right to work, free choice of employment, just and favourable conditions of work and protection against unemployment.²⁸

26. Right to equal pay for equal work.²⁹

27. Right to just and favourable remuneration.³⁰

28. Right to form and to join trade Unions.³¹

29. Right to rest and leisure.³²

30. Right of living adequate for the health and well being of himself and his family.³³

31. Right to all children to enjoy same social protection.³⁴

25. Article 21, para 1

26. Article 21, para 2

27. Article 22.

28. Article 23, para 1.

29. Article 23, para 2.

30. Article 23, para 3

31. Article 23, para 4.

32. Article 24.

33. Article 25, para 1.

34. Article 25, para 2.

- 32. Right to education.³⁵
- 33. Right of parents to choose the kind of education for their children.³⁶
- 34. Right to participate in cultural life of the community.³⁷
- 35. Right to protection of moral and material interests resulting from any scientific literacy or artistic production of which he is the author.³⁸

4. Concluding Articles:

Articles 28 to 30 may be referred as concluding or miscellaneous Article because they do not fit in any of the above three categories. For example, Articles 28 provides that every one is entitled to a social and international order in which the rights and freedom set fourth in this Declaration can be fully realized. Beside this Articles 29 (1) is exception because this is the only provision in the whole declaration which speaks of duties.

Articles 29 (1) provides that every one has duties to the community in which alone the free and full development of his personality is possible. However, Articles 29 (2) makes it clear that in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of

35. Article 26, para 1.

37. Article 27, para 1.

36. Article 26, para 3.

38. Article 27, para 2.

meeting the just requirements of morality, public order and the general welfare in a democratic society.

Articles 29 (3) further provides that these rights and freedoms may no case be exercise contrary to the purpose and principles of the United Nations.

Articles 30 incorporates a rule of interpretation or a saving clause by providing that nothing in this Declaration may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set fourth herein.

IV. Influence of the Universal Declaration of Human Rights;

Since its adoption the Universal Declaration has exercised a powerful influence, both internationally and nationally, it has been rightly pointed out that “whatever its legal quality, the Declaration has set a standard by which national behaviour can be measured and to which nations can aspire. The Declaration has helped to give contour and content to the generalities of the Charter reflecting the spirit and the needs of the day. Fawcett has also remarked, “The U.N. Declaration on Human Rights in 1948 was a public, and indeed a global proclamation of”a common standard of achievement for all peoples and all nations.... it (i.e. the Declaration) is the mine from which other conventions as well as national constitutions to protecting these rights have been and are being quarried. As a result of the Universal Declaration the subject of human rights has fostered so much international legislation of the highest value that as legal topic it has no parallel to day. Human rights have covered a wide variety of

different aspects of life ranging from genocide and prevention of discrimination to freedom of information, association, status of women, refugees etc. Thus the subject is all embracing and in this respect no other topic can be said to have this all embracing character affecting the life of a common man.¹

The provisions of the Universal Declaration on Human Rights are cited as justification for action taken by the U.N. they have also inspired international conventions both within and outside the U.N. In a large number of instances, the Universal Declaration has been used as a conduit and a yardstick to measure the degree of respect for and compliance with the international standard of human rights.

The provisions of the Universal Declaration on Human Rights were transformed into international conventional law in the International Covenants on Human rights, which along with the Universal Declaration on Human Rights are known as International Bill on Human Rights, adopted by the General Assembly on December 16, 1966. Later on they were signed and ratified by large number of States. Besides this, a considerable number of other International Conventions were prepared, adopted and put into effect after 1948 to implement the rights and freedoms proclaimed in the Universal Declaration of Human Rights. The preambles of those conventions often specifically refer to the Declaration or reproduce the relevant provisions of the Declaration in the text of the conventions. Some of these conventions are of a worldwide character, other are of a regional or bilateral character.

1. Dr. Nagender Singh, '[Recent Trends in the Development of International Law and Organisation Promoting Inter-State Cooperation]' (University of Geneva, Inaugural Nehru Lecture, 1869), p. 175.

The U.N. has adopted 50 others legal instruments on human rights. These include convention on Genocide, Slavery, Torture, Racial Discrimination, Apartheid, protection of refugees, children, discrimination against women, protection of the rights of all migrant workers and members of their families, etc.

The rights and freedoms enshrined in the Universal Declaration on Human Rights have been incorporated in various Declarations adopted by the U.N., such as.

1. Declaration on the Rights of the Child. (1959)
2. Declaration on the Granting of Independence to Colonial Countries and Peoples (1960)
3. Declaration on the Elimination of all form of Racial Discrimination (1963)
4. Declaration on Elimination of Discrimination against Women. (1967)
5. Declaration on Territorial Asylum. (1990)
6. Declaration on Social Progress and Development. (1969)
7. Declaration on the Rights of Mentally Retarded Person. (1971)
8. Declaration on the Use of Scientific and Technological Progress in the Interest of Peace and for the Benefit of Mankind. (1975)
9. Declaration on the Rights of Disabled Person. (1975)
10. Declaration on Protection of all Persons from being subjected to Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (1975)
11. Declaration on the Rights of Child. (1975)
12. U.N. Declaration on the Elimination of all Forms of Intolerance and Discrimination Based on Religion or Belief. (1981)
13. Declaration on the Human Rights of Individual who are not Nationals of the Country in which they live. (1985)

14. Declaration on the right to Development. (1986)
15. Vienna Declaration on Human Rights. (1993)
16. Declaration on the Elimination of Violence against Women and (1993)
17. Copenhagen Declaration and Programme of Action on Social Development. (1995)

More important than the above declarations are various International Conventions, which have been influenced and inspired by the Universal Declarations on Human Rights because these conventions create legally binding obligations. Examples of such International Conventions are:

18. Convention for the Suppression of the Traffic in Persons and of the Exploitation or Prostitution of others. (1949)
19. Convention on the Status of Refugees. (1951)
20. Convention on the Prevention, Punishment of the Genocide. (1951)
21. Convention on the Political Rights of Women. (1952)
22. Convention on the Status of Stateless Persons. (1954)
23. Supplementary Geneva Convention for Abolishing Slavery the Slave Trade, and Institutions and Practices Similar to Slavery. (1956)
24. Convention on the Nationality of Married Women. (1957)
25. Convention on the Forced Labour. (1957)
26. Convention Concerning Discrimination in respect to Employment and Occupation. (1960)
27. Convention on the Reduction of Statelessness. (1961)
28. Convention on Consent to Marriage, Minimum Age for Marriage and Registration of Marriages. (1962)

29. **International Convention on the Elimination of All Forms of Racial Discrimination.** (1966)
30. **International Covenant on Civil and Political Rights.** (1966)
31. **International Covenant on Economic, Social & Cultural Rights.** (1966)
32. **Optional Protocol to the International Covenant on Civil and Political Rights.** (1966)
33. **Protocol Relating to the Status of Refugees.** (1967)
34. **International Convention on Suppression and Punishment of the Crimes of Apartheid.** (1973)
35. **International Convention Against Taking of Hostages.** (1970)
36. **Convention on the Elimination of all Forms of Discrimination Against Women.** (1979)
37. **Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or punishment** (1984)
38. **Convention on the Rights of Child.** (1989)
39. **Convention on the Protection of the Rights of all Migrant workers and Members of their families.** (1990)
40. **European Convention for the Protection of Human Rights and Fundamental Freedom signed at Rome on 4th November.** (1950)
41. **Later on some other Religion Conventions, such as European Charter which was signed on October 18, 1961 and came into force on February 26,** (1965)
42. **American Convention on Human Rights.** (1969)
43. **African Charter on Human and Peoples rights which was adopted on June 27, 1981, and came into force on October 21,** (1986)

The Judges of the International Court of Justice have cited to the provisions of the Universal Declaration of Human Rights in a number of cases, such as the Anglo-Irani Oil Company Case V.S.U.POR² and Nottebohm Case³. An important example of regional convention is the European Convention for the Protection of Human Rights and Fundamental Freedom signed at Rome on 4th November 1950.

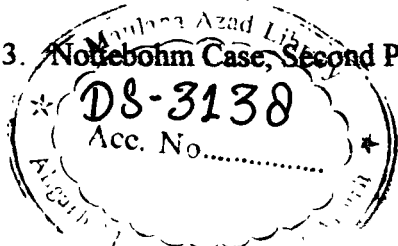
V. Influence of Universal Declaration on National Constitutions, Municipal Laws and Court Decisions:

The provisions of the Universal Declaration of Human Rights have influenced various national constitutions enacted after the adoption of the Universal Declaration. For example, the constitution of Algeria, Burundi, Cameroon, Chad, Democratic Republic of Congo, Dhaomey, Guniea, Gabon, Ivory Cost, Madagaskar, Mali, Mauritiana, Niger Senegal, Tongo and Upper Volta (When attained independence between 1958 and 1964), the peoples of these countries solemnly affirmed their devotion to the principles and ideals of the Universal Declaration.

The principles and ideals of Declaration are also found in municipal law in a number of law and decrees enacted in various countries. The Indian Constitution bears the impact of the Universal Declaration and this has been recognised by the Supreme Court of India. While referring to the fundamental Rights contained in part III of the

2. Anglo-Iranian Oil Co. Ltd. V. S.U. POR 22 International Law Reports (1955), P. 23.

3. Nottebohm Case, Second Phase, I.C.J. Rep. (1955), P. 4.



Constitution in *Keshvanand Bharti V state of Kerela*.⁴ Sikri, Chief Justice observed:

“I am unable to hold that these provisions show that some rights are not natural or inalienable rights. As a matter of fact, India was a party to the Universal Declaration of Human Rights ... and that Declaration describes some fundamental rights as inalienable. “Even the Soviet Constitution could not escape the influence of the Universal Declaration. Chapter 7 of the draft Soviet Constitution contained “the Basic Rights, Freedoms and Duties of the Citizens of the U.S.S.R.” Thus the political rights and freedoms of the Soviet Citizens were “for more comprehensively formulated”⁵ in the Constitution.

VI. Legal Significance of the Universal Declaration of Human Rights:

There is a great controversy in regard to the legal significance of the Universal Declaration. On the one hand, there are those writers who subscribe to the view that the Universal Declaration is not a legally binding instrument. On the other hand, there are some writers who have expressed the view that Declaration might not have been binding when it was adopted in 1948 but it has now become binding or assumed legal implications.

4. AIR, 1973 SC 1461.

5. Report of Leonid Brezhnev, CPSU, General Secretary and Chairman of the Constitution to C.P.S.U. Central Committee on May 24, 1977, reproduced in New Times, Vol. 24 (June 1, 1977) pp. 21-33.

Besides these two views there are a number of authors who has expressed the view that although the Universal Declaration is not legally binding yet it has a great moral and political force behind it and serves as a general guide, code of conduct or yardstick from which the actions of men and women and nations are judged so far as the respect for and observance of human rights are concerned

According to Palmer and Perkins,⁶ “The declaration is merely a statement of principles, not a legally binding instruments, but it has become one of the best known International documents and it has often been referred to in resolutions of the U N the Specialised Agencies, regional arrangements and other International Organisations, and in national Constitutions, legislation and Court decisions It is a beacon light for all man kind, even though it has been honored more often in the breach than in the observance ”

In the view of Starke “The declaration could not and did not purport to be more than manifesto, a statement of ideals, a path-finding instruments, yet it has had a remarkable influence on further developments, at both the international and domestic levels, as is reflected in the number of instances of conventions and other instruments referring to, or invoking its provisions ”

Oppenheim also describes to this view, According to him” the Declaration is not an instrument which is legally binding either directly or indirectly, in particular there is no warrant for assuming that it can properly be resorted to for the interpretation of the provisions of human rights and fundamental rights The ninth edition of Oppenheim’s International Law adds,

6 J E S Fawcett, The Law of Nation (Allen Law), The Penguin Press, London, (1968), p. 156

“However, in the years since its adoption, the widespread acceptance of the authority of the Declaration has led some to the opinion that while the Declaration as an instrument is not a treaty, its provision may have come to the embodiment of new rules of customary law in the matter.”⁷

Ian Brownlie⁸ goes a step ahead and writes: “The Declaration is not a legally binding instrument as such, and some of its provisions depart from existing and generally accepted rules. Nevertheless some of its provisions either constitute general principles of law ... or represent elementary considerations of humanity.

More important is its status as an authoritative guide produced by the General Assembly to the interpretation of the Charter. In this capacity, the Declaration has considerably indirect legal effect and is regarded by the Assembly and by some jurists as a part of the law of the United Nations.”⁹ This observation is significant because it indicates the shift that is taking place in the view of the writers in respect of the legal value of the Universal Declaration.

-
7. Oppenheim, *International Law*, Ninth Edition, Vol. I Edited by Sir Robert Jennings and Sir A. Watts, Longman Group U.K. Ltd and Mrs. Tomko Hudson (1992) P.1003
 8. Ian Brownlie, *Documents in International Law*, Second Edition (Oxford University Press, 1972), P. 144.
 9. Ian Brownlie, *Principles of Public International Law*, Second Edition (Clarendon Press, Oxford, 1973), P.554.

6. The Declaration of the Rights of the Child

Convention on the Rights of the Child 1959. “Mankind owns to the child the best it has to give”. This was proclaimed by the Declaration in the Rights of the Child adopted by the General Assembly on November 20, 1959. The Declaration on the Rights of the Child set forth in 10 principles, a code for the well being of every child. Earlier the Universal Declaration of Human Rights proclaimed in Article 25(2) that motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection. The International Covenant on Economic, Social and Cultural Rights showed concern about the protection of and welfare of children by providing in Article 10(3) that special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. Children and young persons should be protected from economic and social discrimination. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below, which the paid employment of child labour should be, prohibited and punishable by law.

The International Covenant on Civil and Political also showed its concern for the protection and rights of child in Article 23 and 24. Article 23, which is mainly concerned with family as the natural and fundamental group unit of society refer to the children in para 4 of the Article. It provides that in the case of dissolution of marriage provisions shall be made for the necessary protection of any children. Article 24, which is fully devoted to the protection and rights of the child provides that every child shall have, without any

discrimination as to race, colour, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of the family, society and the State. Besides this, every child shall be registered immediately after birth and shall have a name. Moreover, every child has the right to nationality.

These references in important international convention, show that the international community was well aware of the problems of children all over the world yet these scattered references were considered not adequate for the protection and welfare of the children; It was proposed that there should be a separate Convention on the Rights of the Child. In 1976, The General Assembly proclaimed the year 1979 as the *International Year of the Child* and decided that the year would have as its objective:

- (a) To provide frameworks for advocacy on behalf of children and for enhancing the awareness of the special needs of children on the part of the decision makers and the public; and
- (b) To promote recognition of the fact that programmes for children should be an integral part of economic and social development plans.

After 10 years of negotiation the 54-article *Convention on the Rights of the Child* was finally adopted by consensus by the General Assembly on the 30th anniversary of the 1959 Declaration on the Rights of the Child, i.e. on 20 November 1989. As stated by the Assembly President, Joseph N. Garba, “the rights of the child have now gone from a declaratory statement of purpose into what will become a binding piece of international legislation.” Executive Director of UNICEF, James P. Grant hailed the Convention as “Magna Carta” for children. The Convention has defined a child as “every human being below that age of 18 years.”

Rights of the Child contained in the Convention:- Following are some of the main rights of the child contained in the Convention:

- i. Every child has the inherent right to life.
- ii. Every child has the right to a name and to acquire nationality.
- iii. Every child has, as far as possible, the right to know and be cared for by his or her parents.
- iv. Children shall have the right to freedom of expression, thought, conscience and religion.
- v. Right to freedom of association and peaceful assembly.
- vi. Right to education, rest and leisure.
- vii. Right to the highest attainable standard of health.
- viii. Right to a standard of living “adequate for his or her physical, mental, spiritual, moral and social development.”
- ix. Right to the protection of the law, against arbitrary or unlawful interference with his or her privacy, family, home or correspondence.
- x. Rights not to be separated from their parents against their will.
- xi. Right to be protected from economic exploitation, and hazardous work, drug use and trafficking, sexual exploitation and sexual abuse, and “all other forms of exploitation prejudicial to any aspects of the child’s welfare.”
- xii. Right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment.

Other main provisions.- Besides the above- mentioned rights of the child, there are a number of provisions in the convention seeking the welfare and protection of the child. These include the following main provisions:

- i. State Parties shall respect the responsibilities, rights and duties of parents, deal with family reunification “in a positive humane and expeditious manner” and combat the illicit transfer and non-return of children abroad.
- ii. A minority or indigenous child shall not be denied the right to his or her own culture, religion or language.
- iii. A mentally or physically disabled child should enjoy a full and decent life.
- iv. A child who is capable of forming his or her own views should have the right to express those views freely in all matters affecting the child including any judicial and administrative proceeding.
- v. Capital punishment of life imprisonment shall not be imposed for offences committed by persons under 18.
- vi. States Parties shall establish a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.
- vii. State Parties shall take all feasible measures to ensure that children under 15 do not take part in hostilities and shall refrain from recruiting them into their armed forces.
- viii. The best interests of the child shall be the paramount consideration for adoption.

For coming into forces, the Convention on the Rights of the Child was required to be ratified by 20 State Parties. This requirement having been fulfilled, Convention came into force, on September 2, 1990 and at present it has as many as 191 State Parties.

Committee on the Rights of Child: - State Parties to the Convention have undertaken to submit reports on the measures they have adopted to give effect to the provisions of the Convention. In order to examine these reports, the Convention provides for the establishment of a committee on the Rights of Child consisting of ten experts of high moral standing and recognized competence. If necessary, the Committee may request the State Parties further information, which is relevant for the purpose. The Committees submit reports on its activities every two years to the General Assembly through the Economic and Social Council. Though the Convention on the Rights of the Child has been rightly hailed as a great landmark yet the real problem is that of its implementation. The implementation machinery under the convention is very weak. The Committee on the Rights of the Child has no teeth. It can simply make suggestions and recommendation. Therefore, international co-operation and sincere national efforts are required to improve the lot of millions of children who are the victims of violations of human rights all over the world.

7. International Convention on the Rights of Child 1989:

A great headway had been made in the year 1989, which marked the 30th Anniversary of the 1959 Declaration of the Rights of the Child and the 10th Anniversary of the International Year of the Child, when on 20th November the General Assembly adopted an International Convention on the Rights of Child, which was termed by the General Assembly President Joseph N. Garba as a binding piece of International legislation. The Convention needs to be ratified by 20 countries, - before it comes into force, prior to being placed before the Assembly the Draft of the Convention was approved by the Economic and Social Council and the Commission on the Human Rights during their sessions in 1989. The Preamble to the Convention states that a child "needs

special safeguards and care including appropriate legal protection before as well as after birth.”

Some of the main points of the convention are: -

1. The convention defines a child as every human being below the age of 18 years.
2. Every child has the inherent right to life, to a name to acquire a nationality and “as far as possible, the Right to know and be cared for by his or her parents.”
3. Children shall have the right to freedom of expression, thought, conscience and religion, association and peaceful assembly, education, rest and leisure, social security, the highest attainable standard of health “and a standard of living adequate for his or her physical, mental spiritual, moral and social development.”
4. Children shall not be separated from their parents against their will. States parties will respect the responsibilities, rights and duties of parents, deal with family reunification “in a positive human and expeditious manner,” and combat the illicit transfer non-return of child abroad.
5. Children shall be protected from economic exploitation and from hazardous work, drug use and trafficking, sexual exploitation and sexual abuse, and all other forms of exploitation prejudicial to any aspects of the child welfare.”
6. A minority or indigenous child shall not be denied the right to his or her own culture, religion or language.
7. A mentally or physically disabled child should enjoy a full and decent life.
8. A child who is capable of forming his or her own views should have the right to express those views freely in all matters affecting the child, including any judicial and administrative proceedings.

9. No child shall be subjected to torture or other cruel, in human or degrading treatment or punishment. Capital punishment or life imprisonment shall not be enforced for offence committed by persons under 18 years.
10. State parties will establish “a minimum age below which children shall be presumed not to have the capacity to infringe the penal law.”
11. State parties shall take “all feasible measures” so that children under 15 “do not take direct part in hostilities” and “shall refrain from recruiting” them into their armed forces.
12. The best interest of the child shall be “ the paramount consideration” for adoption.

There are total of 35 Articles in this convention and the above represent only some silent features of them. A Committee on the Rights of the Child made up to 10 experts is to be established to monitor compliance with convention provisions. It is heartening to note that the convention has been ratified by more than two third of the total members of the U.N.O. with in a period of about half of the decade. The ratification requires a country to bring all its laws in to line with the convention. Many of its provisions are reflected in the year 2000 goals for improving the well being of children agreed on at the 1990 World Summit for children. Subsequently it has also been affirmed in the World Conference on Education for all at Jomtien in March 1990; and SAARC Countries have resolved the elimination of child labour progressively and in the accelerate manner.¹

1. Civil Services Chronicle, New Delhi, February 1997, p – 29.

8. National Human Rights Commission's Schemes For Child Labour

Human rights are never safe in the country unless an active judiciary with pragmatic humanism becomes the sentinel on the qui. Homicides of Human Rights anywhere is a matter of concern for every one and every where, to protect the rights of the child it is essential to set up a Human Rights Commission in each and every country of the world.

Judiciary in India under its policy for attainment of social justice has been very attentive to give effect to the rights of children in general and child labour in particular. In the historic pronouncement of *M.C.Mehta* emphatically touched the issues of juvenile justice, child welfare, minimum wage, and freedom from bondage and dignity, health and children of the Country. Seen in this backdrop are the cases of *Sheela Barse Vs State of Maharashtra*¹, *People union for Democratic Rights Vs Union of India*², *Salal Hydroelectric Project Vs State of Jammu & Kashmir*³, *M.C. Mehta Vs State of Tamil Nadu*⁴, *M.C. Mehta Vs State of Tamil Nadu*⁵ and especially *Unni Krishnan Vs State of Andhra Pradesh*⁶, relating to children rights to education and work.

1. (1983) 2 SC. 96.

2. AIR 1982 SC. 1473.

3. AIR 1984 SC. 177.

4. AIR 1993 SC 2178.

5. AIR 1991 SC 417.

6. AIR 1993 SC 2178.

The commission perceives that there is a growing recognition in the senior-most policy-making circles of the country, of the need to the child labour, starting with those employed in hazardous industries. This has led to the approval of a series of constructive measures by the Central Government, which the commission commends.⁷ But the commissions dissatisfied with the progress of various schemes aimed at eradicating child labour in glass industry in Firozabad. The National Human Rights Commission (NHRC) has asked the district authorities to strengthen facilities in order to effectively implement and oversee the various convergence scheme available there⁸.

The District Administration has introduced various developments or employment oriented scheme in the district to ameliorate the condition of downtrodden families associated with child labour. An amount of Rs. 36.9 crore has been sanctioned by the Central and State Government for the scheme and for the benefit of the child worker.⁹

In an effort to speed up the implementation of various schemes, the commission has asked the state government authorities to expeditiously fill up the key posts of project director and other officers who are to monitor various schemes.

7. National Human Rights Commission, Annual Report, 1995-96. P. 29.

8. The Hindustan Times, New Delhi June 21, 1997.

9. Ibid.

CHAPTER - III

LEGISLATIVE ENACTMENTS TO PROTECT CHILD LABOUR

LEGISLATIVE ENACTMENTS TO PROTECT THE CHILD LABOUR

The Child labour is a wide spread phenomenon. It has been seen in one form or another form in the ancient days. The Industrial Revolution has brought about fundamental changes in the mode of production. Now the machines can be operated even by child with least efforts and the labour of child is also cheaper than an adult. The demand for the cheap labour is the cause of growth of child labour.

The framers of Indian Constitution incorporated some provision to prohibit the child labour. For the implementation of the constitutional requirement there are many statutory provisions to protect child labour by enacting various laws. These laws placed restriction on the employment of children and provide legal or statutory protection to child in various occupations. Today we have more three hundred Central and State Legislation on child labour. These legislation mainly dealing with minimum age and hazardous employments. A brief persual of some of the important legislation will be well in order for the present study.

1. The Children (Pledging of Labour) Act 1933.

According to this Act “An agreement to pledge the labour of a child” means an agreement, written or oral, express or implied by the parent or guardian of a child, in return for any payment or benefit received or to be received by him. This Act prohibits the pledging of the labour of children. It also prohibits the making of an agreement to pledge the labour of children and the employment and children whose labour has been pledged. According to this Act child means a person who is under the age of fifteen years and “guardian” means any person who is having legal custody of the

child or control over the child. Under this Act and agreement to pledge the labour of a child would be void.

2. The Child Employment Act 1938.

Another legislative step to protect the child labour exploitation is the Child Employment Act, 1938. The object of the Act is to regulate the employment of children in certain industrial employment and to provide safe guards. In this Act the following provisions are made.

Prohibition of Employment:-

No child who has not completed his fourteen years of age can be employed or permitted to work in any occupation connected with the transport of passengers, goods or mails by railway or connected with the port authority within the limits of any port, children above the age of fifteen and below seventeen should be allowed an interval of rest at least for twelve consecutive hours which shall include at least seven consecutive hours between 10 a.m. and 7 p.m.

These prohibition do not apply in the case of apprenticeship or vocational training. It is further provided that no child who has not completed fourteen years shall be employed or permitted to work in any workshop where in any of the process set fourth in the schedule is carried on. The state government may add any other works also to the schedule.

Section 24 prohibits the employment of children

The section 24 provides that no child shall be required or allowed to work in any industrial premises. Section 25 prohibition of employment of women or young persons during certain hours. No women or young person shall be required or allowed to work in any Industrial premises except between 6 a.m. to 7 p.m.

3. The Factories Act, 1948.

The factories Act, 1948 prohibits the employment of children below 14 years of age in factories. A child is not permitted to work during night (10 p.m. to 6 a.m.) and not more than 4 ½ hours in a day¹. Restrictions have also been laid on the employment of children in certain dangerous occupations². A special register has to be maintained by the employer in respect of child labour to satisfy inspecting authorities that provisions regarding child labour are implemented³. A young person can be employed in a factories only if his fitness and age are duly certified by a medical practitioner. Such fitness certificate remain valid for a year only⁴. The adolescent or the child must be issued a token marked “p” (protected person) which he must carry during working hours⁵. Rest, shelters, canteens etc. are also to be provided for workers, including child labourers⁶. This Act imposes penalty on a parent or guardian for permitting double employment or children⁷.

-
1. Section 54, The Factories Act, 1948.
 2. Section 23, The Factories Act, 1948.
 3. Section 62 & 73, The Factories Act, 1948.
 4. Section 69, The Factories Act, 1948.
 5. Ibid.
 6. Section 68, The Factories Act, 1948.
 7. Section 47, The Factories Act, 1948.

4. The Plantation Labour Act, 1951:

Under this Act, 'child' means a person who has not completed his fifteenth year. It covers all tea, coffee, rubber, cinchona and cardamom plantations which measures 117 hectares or more, in which 30 or more persons are employed. The employment of the children between the age of 12 is prohibited under the Act. However, the Act permit the employment of child above 12 years only on a fitness certificate from the appointed surgeon⁸. The certificate of fitness is valid for one year at time. This is the only Act where in statutory provisions for education housing and medical facilities have been enjoined upon employer⁹

5. The Merchant Shipping Act, 1958.

The Act prohibits employment of children below the age of 14 in a ship except a trainingship, home tradeship less than two hundred ton gross, or a ship where other family members work¹⁰. It also prohibits employment of young persons below the age of 18 under certain specific conditions¹¹. The responsibility of administering the Act rests with the Director General of Shipping.

8. Section 24 & 25, The Labour Plantation Act, 1951.

9. Section 27 of the Labour Plantation Act, 1951.

10. Section 109 of the Merchant Shipping Act, 1958.

11. Section 110 of the Merchant Shipping Act, 1958.

6. Motor Transport Workers Act, 1961.

The Motor Transport Act, 1961, extends to the whole of India and applies to every motor transport undertaking employing 5 or more transport workers. 'Child' means a person below 15 years. The Act prohibits the employment of children below 15 years of age in any capacity in the motor transport undertaking.¹² The State governments are however, empowered to apply all or any of the provisions of this Act to any motor transport undertaking employing less than 5 workers.

7. The Apprenticeship Act, 1961.

The Act extends to the whole of India. The Act lays down that no person shall be qualified for being engaged as an apprentice to undergo apprenticeship training in any designated trade unless he is at least 14 years of age and satisfied such standards of education and physical fitness as may be prescribed.¹³

8. The Atomic Energy Act, 1962:

This Act extend to the whole of India. The Act covers all workers in factories and mines producing atomic and other mineral products emitting radiation or all working places where radiation takes place. Children below the age of 18 years are provided to work except when they are permitted by the competent authorities.

12. Section 21 & 22 of the Motor Transport Workers Act, 1961.

13. Section 3 of the Apprentices Act, 1961:

9. The Beedi and Cigar Workers (Condition of Employment) Act, 1966.

This Act extends to the whole of India and prohibits employment of children below the age of 14 years in any industrial premises¹⁴. The employment of young persons those between 14 and 18 years age, is prohibited between 7 p.m. and 6 a.m.¹⁵. The administration of the Act rests with the State Governments.

10. The Child Labour (Regulation & Prohibition) Act, 1986.

Introduction : In the course of 19th century and early 20th century, people, especially in the developed countries became conscious of the evils of the exploitation of children and International Labour Organisation (ILO) was set up in 1919 to formulate guidelines to improve the working conditions of children. At the very first session of the International Labour Conference organised by ILO on the prohibition of child labour in 1919 a convention was adopted fixing the minimum age as 14 years for children in industrial employment. In India, the first Act relating to child labour was passed in 1881, which only provided for the regulation of the working hours of children below 12 years of age. This Act was applied only to units having 100 or more workers and using mechanised power. In 1891, another Act was passed which applied to units having 50 or more workers. There are several laws passed after independence, e.g., the Factories Act, 1948, the Mines Act, 1952, the Merchant Shipping Act, 1958, etc., regulating the employment of children in various occupations which were purported to protect the health, safety, etc., of children. Recognising the need for special protection to the children few provisions in the Article 15, 24, 39 and 45 of the Constitution of India were

14. Section 24, The Beedi and Cigar Workers (Condition of Employment) Act, 1966.

15. Section 25, The Beedi and Cigar Workers (Condition of Employment) Act, 1966.

incorporated to that end. On 21st December, 1976, the United Nations General Assembly adopted a resolution proclaiming 1979 as the “International Year of the Child” with general objective of promoting welfare of children which has once again focussed the world attention on the problem of child labour.

Thus, due to global developments it was necessitated to bring out a comprehensive enactment on this subject. The Child Labour (Prohibition Regulation) Bill was introduced in the Rajya Sabha on 22nd August 1986.

Statement of Objects and Reasons

There are number of Acts which prohibit the employment of children below 14 years and 15 years in certain specified employments. However, there is no procedure laid down in any law for deciding in which employment, occupations or processes the employment of children should be banned. There is also no law to regulate the working condition, of children in most of the employments where they are not prohibited from working and are working under exploitative conditions.

2. This Bill intends to——

- i. ban the employment of children, i.e., those who have not completed their 14 year, in specified occupation and processes;
- ii. lay down a procedure to decide modifications to the Schedule of banned occupations or processes;
- iii. regulate the condition of work of children in employments where they are not prohibited from working;

- iv. lay down enhanced penalties for employment of children in violation of the provisions of this Act, and other Acts which forbid the employment of children;
 - v. to obtain uniformity in the definition of “child” in the related laws.
3. The Bill seeks to achieve the above objects.

Act 61 of 1986

The Child Labour (Prohibition & Regulation) Bill, 1986 having been passed by both the Houses of Parliament received the assent of the President on 23rd December, 1986. It came on the Statute Book as The Child Labour (Prohibition And Regulation) Act, 1986 (61 of 1986).

THE CHILD LABOUR (PROHIBITION AND REGULATION) ACT, 1986, (61 of 1986).

An Act to prohibit the engagement of children in certain employment and to regulate the conditions of work of children in certain other employments.

BE it enacted by parliament in the Thirty-seventh Year of the Republic of India as follows:-

PART I

Preliminary

- 1. Short title, extent and commencement.** (1) This Act may be called the Child Labour (Prohibition and Regulation) Act, 1986.
- (2) It extends to the whole of India.
- (3) The provisions of this Act, other than Part III, shall come into force at once, and Part III shall come into force on such date as the Central Government may, by

notification in the Official Gazette, appoint, and different dates may be appointed for different states and for different classes of establishments.

2. Definitions. In this Act, unless the context otherwise requires,

- i. “appropriate Government” means, in relation to an establishment under the control of the Central Government or a railway administration or a major port, or mine or oilfield, the Central Government and in all other cases, the State Government;
- ii. “child” means a person who has not completed his fourteenth year of age;
- iii. “day” means a period of twenty-four hours beginning at mid-night;
- iv. “establishment” includes a shop, commercial establishment, workshop, farm, residential hotel, restaurant, eating house, theater or other place of public amusement or entertainment;
- v. “family” in relation to an occupier, means the individual, the wife or husband, as the case may be, of such individual, and their children, brother or sister of such individual;
- vi. “occupier”, in relation to an establishment of a workshop, means the person who has the ultimate control over the affair of the establishment or workshop;
- vii. “port authority” means any authority administering a port;
- viii. “prescribed” means prescribed by rules made under section 18;
- ix. “week” means a period of seven days beginning at midnight on Saturday night or such other night as may be approved in writing for a particular area by the Inspector;
- x. “workshop” means any premises (include the precincts thereof) where in any industrial process is carried on, but does not include premises to which the

provisions of section 67 of the Factories Act, 1948 (63 of 1948), for the time being, apply.

PART II

Prohibition of Employment of Children in Certain Occupations and Processes

3. Prohibition of employment of children in certain occupations and processes.

No child shall be employed or permitted to work in any of the occupations set forth in Part A of the Schedule or in any workshop wherein any of the processes set forth in Part B of the Schedule is carried on:

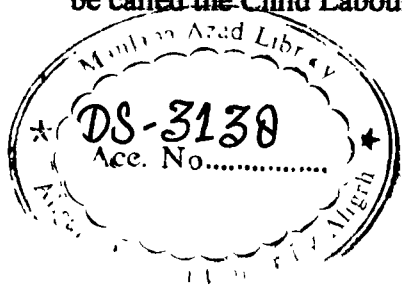
Provided that nothing in this section shall apply to any workshop wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance or recognition from, Government.

Comments

The prohibition of employment of children is not applicable to any workshop wherein any process is carried on by the occupier with the aid of his family, or to any school established by or receiving assistance or recognition from, Government.

4. Power to amend the Schedule. The Central Government, after giving by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add any occupation or process to the schedule and there upon the Schedule shall be deemed to have been amended accordingly.

5. Child Labour Technical Advisory Committee. (1) The Central Government may, by notification in the Official Gazette, constitute an advisory committee to be called the Child Labour Technical Advisor Committee (here after in this



section referred to as the Committee) to advise the Central Government for the purpose of addition of occupations and processes to the Schedule.

- (2) The Committee shall consist of a Chairman and such other members not exceeding ten, as may be appointed by the Central Government.
- (3) The committee shall meet as often as it may consider necessary and shall have power to regulate its own procedure.
- (4) The Committee may, if it deems it necessary so to do, constitute one or more sub-committees and may appoint to any such sub-committee, whether generally or for the consideration of any particular matter, any person who is not a member of the Committee.
- (5) The term of office of, the manner of filling casual vacancies in the office of, and the allowances, if any, payable to, the Chairman and other members of the Committee, and the conditions and restrictions subject to which the Committee may appoint any person who is not a member of the Committee as a member of any of its sub-committee shall be such as may be prescribed.

Part III

Regulation of Conditions of Work of Children

6. **Application of Part.** The provisions of this Part shall apply to an establishment or a class of establishments in which none of the occupations or processes referred to in section 3 carried on.

Comments

This section regulates the working conditions of the children in employments where they are not prohibited from working by section 3 of this Act.

7. Hours and period of work. (1) No child shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments.

(2) The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest for at least one hour.

(3) The period of work of a child shall be so arranged that inclusive of his interval for rest, under sub-section (2), it shall not be spread over more than six hours, including the time spent in waiting for work on any day.

(4) No child shall be permitted or required to work between 7 p.m. and 8 a.m.

(5) No child shall be required or permitted to work overtime.

(6) No child shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.

Comments

This section stipulates that no child shall work for more than 3 hours before he has had an interval for rest for at least one hour. The double employment of a child is banned.

8. Weekly holidays. Every child employed in an establishment shall be allowed in each week, a holiday of one whole day, which day shall be specified by the occupier in a

notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.

Comments

The child employed in an establishment is entitled for a holiday of one whole day in each week.

9. Notice to Inspector. (1) Every occupier in relation to an establishment in which a child was employed or permitted to work immediately before the date of commencement of this Act in relation to such establishment shall, within a period of thirty days from such commencement, send to the Inspector within whose local limits the establishment is situated, a written notice containing the following particulars, namely:

- (a) the name and situation of the establishment;
- (b) the name of the person in actual management of the establishment;
- (c) the address to which communications relating to the establishment should be sent; and
- (d) the nature of the occupation or process carried on in the establishment.

2. Every occupier, in relation to an establishment, who employs, or permits to work, any child after the date of commencement of this Act in relation to such employment, send to the Inspector within whose local limits the establishment is situated, a written notice containing the particulars as are mentioned in sub-section (1).

Explanation. For the purposes of sub-sections (1) and (2), “date of commencement of this Act, in relation to an establishment” means the date of bringing into force of this Act in relation to such establishment.

(3) Nothing in section 7, 8 and 9 shall apply to any establishment wherein any process is carried on by the occupier with the aid of his family or to any school established by, or receiving assistance to recognition from, Government.

10. Dispute as to age. If any question arises between an Inspector and an occupier as to the age of any child who is employed or is permitted to work by him in an establishment, the question shall, in the absence of a certificate as to the age of such child granted by the prescribed medical authority, be referred by the Inspector for decision to the prescribed medical authority.

11. Maintenance of register. There shall be maintained by every occupier in respect of children employed or permitted to work in any establishment, a register to be available for inspection by an Inspector at all times during working hours or when work is being carried on in any such establishment, showing

- (a) the name and date of birth of every child so employed or permitted to work;
- (b) hours and periods of work of any such child and the intervals of rest to which he is entitled;
- (c) the nature of work of any such child; and
- (d) such other particulars as may be prescribed.

12. Display of notice containing abstract of sections 3 and 14 Every railway administration, every port authority and every occupier shall cause to be displayed in a conspicuous and accessible place at every stations on its railway or within the limits of a port or at the place of work, as the case may be, a notice in the local language and in the English language containing an abstract of sections 3 and 14.

13. Health and safety. (1) The appropriate Government may, by notification in the Official Gazette, make rules for the health and safety of the children employed or permitted to work in any establishment or class of establishments.

(2) without prejudice to the generality of the foregoing provisions, the said rules may

provide for all or any of the following matters,

namely:

- i. cleanliness in the place of work and its freedom from nuisance;
- ii. disposal of wastes and effluents;
- iii. ventilation and temperature;
- iv. dust and fume;
- v. artificial humidification;
- vi. lighting;
- vii. drinking water;
- viii. latrine and urinals;
- ix. spittoons;
- x. fencing of machinery;
- xi. work at or near machinery in motion;
- xii. employment of children on dangerous machines;
- xiii. instructions, training and supervision in relation to employment of children on dangerous machines;
- xiv. device for cutting off power;
- xv. self-acting machinery;
- xvi. easing of new machinery;
- xvii. floor, stairs and means of access;

- xviii. pits, sumps, openings in floors, etc.;
- xix. excessive weights;
- xx. protection of eyes;
- xxi. explosive or inflammable dust, gas, etc.;
- xxii. precautions in case of fire;
- xxiii. maintenance of buildings; and
- xxiv. safety of buildings and machinery.

Comments

The appropriate Government is empowered to make rules in such matters as cleanliness, disposal of wastes, dust, lighting, precaution against fire, protection of eyes, spittoons and ventilation, etc., in any establishment for the health and safety of the children employed or permitted to work.

PART IV

Miscellaneous

14. Penalties. (1) Whoever employs any child or permits any child to work in contravention of the provisions of section 3 shall be punishable with imprisonment for a term which shall not be less than three months but which may extend to one year or with fine which shall not be less than ten thousand rupees but which may extend to twenty thousand rupees or with both.

(2) Whoever having been convicted of an offence under section 3, commits a like offence afterwards, he shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to two years.

(3) Whoever--

- (a) fails to give notice as required by section 9; or**
- (b) fails to maintain a register as required by section 11 or makes any false entry in any such register; or**
- (c) fails to display a notice containing an abstract of section 3 and this section as required by section 12; or**
- (d) fails to comply with or contravenes any other provisions of this Act or the rules made thereunder,**

shall be punishable with simple imprisonment which may extend to one month or with fine which may extend to ten thousand rupees or with both.

15. Modified application of certain laws in relation to penalties. (1) Where any person is found guilty and convicted of contravention of any of the provisions mentioned in sub-section (2), he shall be liable to penalties as provide in sub-sections (1) and (2) of section 14 of this Acts and not under the Acts in which those provisions are contained.

(2) The provisions referred to in sub-section (1) are the provisions mentioned below:

- (a) Section 67 of the Factories Act, 1948 (63 of 1948);**
- (b) Section 40 of the Mines Act, 1952 (35 of 1952);**
- (c) Section 109 of the Merchant Shipping Act, 1958 (44 of 1958); and**
- (d) Section 21 of the Motor Transport Workers Act, 1961 (27 of 1961).**

Comments

Section of the above quoted Acts are reproduced below: -

- (i) Section 67 of the Factories Act, 1948:**

No child who has not completed his fourteenth year shall be required or allowed to work in any factory.

ii. Section 40 of the Mines Act, 1952:

(1) After the commencement of the Mines (Amendment) Act, 1983, no person below 18 years of age shall be allowed to work in any mine or part thereof.

(2) Notwithstanding anything contained in sub-section (1), apprentices and other trainees, not below sixteen years of age, may be allowed to work, under proper supervision, in a mine or part thereof by the manager:

Provided that in case of trainees, other than apprentices, prior approval of the Chief Inspector or Inspector shall be obtained before they are allowed to work.

Explanation. In this section and in section 43, “apprentice” means an apprentice as defined in clause (a) of section 2 of the Apprentices Act, 1961(52 of 1961).

Clause (a) of section 2 of the Apprentices Act, 1961 (52 of 1961) defines “apprentice” as:

Apprentice means a person who is undergoing apprenticeship training in pursuance of a contract of apprenticeship.

iii. Section 109 of the Merchant Shipping Act, 1958:

No person under fifteen years of age shall be engaged or carried to sea to work in any capacity in any ship, except.

- a. in a school ship or training ship, in accordance with the prescribed conditions; or
- b. in a ship in which all persons employed are members of one family; or
- c. in a home-trade ship of less than two hundred tons gross; or

d. where such person is to be employed on nominal wages and will be in the charge of his father or other adult near male relative.

iv. Section 21 of the Motor Transport Workers Act, 1961:

No child shall be required or allowed to work in any capacity in any motor transport undertaking.

16. Procedure relating to offences. (1) Any person, police officer or Inspector may file a complaint of the commission of an offence under this Act in any court of competent jurisdiction.

(2) Every certificate as to the age of a child which has been granted by a prescribed medical authority shall, for the purpose of this Act, be conclusive evidence as to the age of the child to whom it relates.

(3) No court inferior to that of a Metropolitan Magistrate or a Magistrate of the first class shall try any offence under this Act.

17. Appointment of Inspectors. The appropriate Government may appoint Inspector for the purposes of securing compliance with the provisions of this Act and any Inspector so appointed shall be deemed to be a public servant within the meaning of the Indian Penal Code, 1860 (45 of 1860).

18. Power to make rules. (1) The appropriate Government may, by notification in the Official Gazette and subject to the condition of previous publication, make rules for carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the term of office of, the manner of filling casual vacancies of, and the allowances payable to, the Chairman and members of the Child Labour

Technical Advisor Committee and the conditions and restrictions subject to which a non-member may be appointed to a sub-committee under sub-section (5) of section 5;

(b) number of hours for which a child may be required or permitted to work under sub-section (1) of section 7;

(c) grant of certificates of age in respect of young persons in employment or seeking employment, the medical authorities which may issue such certificate, the form of such certificate, the charges which may be made there under and the manner in which such certificate may be issued.

Provided that no charge shall be made for the issue of any such certificate if the application is accompanied by evidence of age deemed satisfactory by the authority concerned.,

(d) the other particulars which a register maintained under section 11 should contain.

19. Rules and notifications to be laid before Parliament or State Legislature. (1)

Every rule made under this Act by the Central Government and every notification issued under section 4, shall be laid as soon as may be after it is made or issued, before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made or issued, the rule or notification shall there after have effect only in such modified form or be of no effect, as the case may be; so, however, that any such

modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

(2) Every rule made by a State Government under this Act shall be laid as soon as may be after it is made, before the legislature of that State.

20. Certain other provisions of law not barred. Subject to the provisions contained in section 15, the provisions of this Act and the rules made there under shall be in addition to, and not in derogation of, the provisions of the Factories Act, 1948 (63 of 1948), the Plantations Labour Act, 1951 (69 of 1951) and the Mines Act, 1952 (35 of 1952).

21. Power to remove difficulties. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date on which this Act receives the assent of the President.

2. Every order made under this section shall, as soon as may be after it is made, be laid before the House of Parliament.

22. Repeal and savings. (1) The Employment of Children Act, 1938 (26 of 1938), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken or purported to have been done or taken under the Act so repealed shall, in so far as it is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the corresponding provisions of this Act.

23. Amendment of Act 11 of 1948. In section 2 of the Minimum Wages Act, 1948,

i. for clause (a), the following clauses shall be substituted, namely:-

‘(a) “adolescent” means a person who has completed his fourteenth year of age but has not completed his eighteenth year;

(aa) “adult means a person who has completed his eighteenth year of age;’

ii. after clause (b), the following clause shall be inserted, namely:-

‘(bb) “child” means a person who has not completed his fourteenth year of age’

24. Amendment of Act 69 of 1951. In the Plantations Labour Act, 1951,

(a) In section 2, in clauses (a) and (c), for the word “fifteenth”, the word “fourteenth” shall be substituted;

(b) Section 24 shall be omitted;

(c) In section 26, in the opening portion, the words “who has completed his twelfth year” shall be omitted.

25. Amendment of Act 44 of 1958. In the Merchant Shipping Act, 1958, in section 109, for the word “fifteen”, the word “fourteen” shall be substituted.

26. Amendment of Act 27 of 1961. In the Motor Transport Workers Act, 1961, in section 2, in clauses (a) and (c), for the word “fifteenth”, the word “fourteenth” shall be substituted.

THE SCHEDULE

(See section 3)

Part A

Occupations

An occupation connected with

- (i) Transport of passenger, goods or mails by railway;
 - (ii) Cinder picking, clearing of an ash pit or building operation in the railway premises;
 - (iii) Work in a catering establishment at a railway station, involving the movement of a vendor or any other employee of the establishment from one platform to another or into or out of a moving train;
 - (iv) Work relating to the construction of a railway station or with any other work where such work is done in close proximity to or between the railway lines;
 - (v) A port authority within the limits of any port;
 - (vi) Work relating to selling of crackers and fireworks in shops with temporary licenses;¹
 - (vii) Abattoirs/slaughter Houses;²
 - (viii) Automobile workshop and garages;³
 - (ix) Foundries;
 - (x) Handling and toxic or inflammable substances or explosives;
-

1. Ins. By S.O. 404 (E), dated 5th June 1989.

2. Ins. By S.O. 263 (E), dated 29th March 1994.

3. ~~Added~~ by S.O. 36 (E), dated 27th January 1999.

- (xi) Handloom and powerloom industry;
- (xii) Mines (underground and underwater) and collieries;
- (xiii) Plastic and fiberglass workshops.

Part B

Processes

- (1) Bidi-making.
- (2) Carpet-weaving including preparatory and incidental process thereof.⁴
- (3) Cement manufacture, including bagging of cement.
- (4) Cloth printing, dyeing and weaving including preparatory incidental process therto.
- (5) Manufacture of matches, explosives and fire works.
- (6) Mica-cutting and splitting.
- (7) Shellac manufacture.
- (8) Soap manufacture.
- (9) Tanning.
- (10) Wool-Cleaning.
- (11) Building and construction industry.
- (12) Manufacture of slate pencils (including packing).⁵
- (13) Manufacture of products from agate.

4. Subs. By S.O. 36 (E), dated 27th January 1999.

5. Ins. By S.O.404 (E), dated 5th June, 1989.

- (14) Manufacturing process using toxic metals and substances, such as lead, mercury, manganese, chromium, cadmium, benzene, pesticides and asbestos.]
 - (15) 'Hazardous process' as defined in section 2 (cb) and 'dangerous operation' as notified in rules under section 87 of the Factories Act, 1948 (63 of 1948).⁶
 - (16) Printing as defined in section 2(K) (iv) of the Factories Act, 1948 (63 of 1948).
 - (17) *Cashew and cashewnut descaling and processing.*
 - (18) Soldering processes in electronic industries.
 - (19) 'Aggarbatti' manufacturing.⁷
 - (20) Automobile repair and maintenance including process incidental thereto, namely, welding, lathe work, dent beating and painting.
 - (21) Brick kilns and roof tiles units.
 - (22) Cotton ginning and processing and production of hosiery goods.
 - (23) Detergent manufacturing.
 - (24) Fabrication workshops (ferrous and non-ferrous).
 - (25) Gem cutting and polishing.
 - (26) Handling of chromite and manganese ores.
 - (27) Jute textile manufacture and coir making.
 - (28) Lime kilns and manufacture of lime.
 - (29) Lock making.
 - (30) Manufacturing process having exposure to lead such as primary and secondary smelting, welding and cutting of lead-painted metal constructions, welding of
-

6. Ins. By S.O. 263 (3), dated 29th March, 1994.

7. Added by S.O. 36 (E), dated 27th June, 1999.

galvanised or zinc silicate, polyvinyl chloride, mixing (by hand) of crystal glass mass, sanding or scraping of lead paint, burning of lead in enameling workshops, lead mining, plumbing, cable making, wire patenting, lead casting, type founding in printing shops. Store type setting, assembling of cars, shot making and lead glass blowing.

- (31) Manufacture of cement pipes, cement products and other related works.
- (32) Manufacturing of glass, glassware including bangles, fluorescent tubes, bulbs and other similar glass products.
- (33) Manufacture of dyes and dye stuff.
- (34) Manufacturing of handling of pesticides and insecticides.
- (35) Manufacturing or processing and handling of corrosive and toxic substances, metal cleaning and photo engraving and soldering processes in electronic industry.
- (36) Manufacturing of burning coal and coal briquettes.
- (37) Manufacturing of sports goods involving exposure to synthetic materials, chemical and leather.
- (38) Moulding and processing of fibreglass and plastic.
- (39) Oil expelling and refinery.
- (40) Paper making.
- (41) Potteries and ceramic industry.
- (42) Polishing, moulding, cutting, welding and manufacture of brass goods in all forms.

- (43) Process in agriculture where tractors, threshing and harvesting machines are used and chaff cutting.
- (44) Saw mill – all process.
- (45) Sericulture processing.
- (46) Skinning, dyeing and process for manufacturing of leather and leather products.
- (47) Stone breaking and stone crushing.
- (48) Tobacco processing including manufacturing of tobacco, tobacco paste and handling of tobacco in any form.
- (49) Tyre making, repairing, re-treading and graphite beneficiation.
- (50) Utensils making, polishing and metal buffing.
- (51) ('Zari' making (all processing).

The Government of India passed time to time legislation to eradicate and prohibit the child labour but its step is unable to solve the problem solely or completely and still the child labour is a great problem. The Government of India claims to abolish this very serious problem in ten years and the Child Prohibition and Regulation Bill, 1986 was passed with the aim that it will be able to eradicate the child labour completely. The Child Employment Act, 1938 was repealed because it was having certain loopholes and it was expected that these loopholes will be removed but unfortunately the new Act also keep most of them.

First the Act only covers the 10 percent of the total-working children in India. Children working in unorganized sector are not protected. The Act does not add any thing to the list of hazardous occupation except the construction work. Many

hazardous occupations are left by the Act. The legislature did not find it necessary to include the glass industry among the list of hazardous work. Where child are forced to work near furnaces kept at 1400 °C and slate industry where slate dust results in thousand of silicosis death.

Secondly the Act does not ban child labour even where hazardous processes are carried on in any workshop if the process is carried on by the occupier with the aid of his family or to any school established by or receiving recognition from the government obviously a hazardous process does not become less so because it is carried on in a school or by family. This clause in the Act exist although Article 24 of the Constitution explicitly prohibits the employment of children below 14 years in any hazardous employment.

Thirdly the Act prescribe no minimum age of the employment of child to work in permitted occupation so a young as a 4 or 5.

Fourthly until now no specific rules for regulation of part III of the act come into force on such date as the Central government may by notification in the official Gazette appoint and different dates may be appointed for different states and different classes of establishment. But unfortunately these rules have not been yet framed.

Lastly there is no commitment on the part of government to implement the Act effectively however, one improvement in the new Act effectively. However one to file a complaint of violation in the court. The difficulty here lies a in the fact that prosecution is possible only if the child's age can be established. Among the illiterate and in the rural areas no one is so meticulous about exact age.

According to the latest Act, some inspectors are appointed in the areas near the factories where the children are employed. The trouble is that inspectors appointed by the administration are often only too glad to look the way if the factory or the shop owner is generous enough to offer him a bribe or, the employer may hide child workers while the force of an inspector lasts also, it is not difficult to find a doctor willing to give a false age certificate to a child employee. Thus the laws remain on paper as pious wishes yet to be enforced. Their ineffectiveness is partly due also to the fault that there is not a single omnibus law but many which provide different definitions of a "child" and prescribe different conditions of work, variable from state to state.

CHAPTER - IV

CONSTITUTIONAL PROVISIONS

CONSTITUTIONAL PROVISIONS

Every need of a child is a right of child. Children are greatest national resources and there is growing sensitiveness of the need to provide special measures for protecting their rights and guarding them against any sort of exploitation. The Indian Constitution with its "Pediatric" conscience also makes special provision for the welfare of children pursuant to which many laws have been made.

When the Constitution was adopted, each and every member of the Assembly recognized the need for granting special protection to children. They unequivocally supported the view that children should also have their distributive justice in future in their free India. Therefore, special provision ensuring child labour welfare have been incorporated in our National Charter, with the intention that they are no longer exploited by the people to accomplish their selfish end.¹ That is why, opening words of the preamble show that the people of India have solemnly committed themselves to secure to all citizens Which implied includes the children as well as justice, social, economic, and political, liberty of thought and expression, belief, faith

1 Sudeshkumar Sharma, 'Children and the Constitution,' S C Journal, May 1989, VOI 2, P 10

worship, equality of status and opportunity and to promote among them all fraternity, assuring the dignity of the individual.² there are various provision in national charter, which imposes a duty upon the state to ensure that the tender age of children is not abused and they are not exposed to economic necessity to enter avocation unsuited to their age and strength. Special provision ensuring justice to children have been incorporated in Part III with Fundamental Rights and Part IV devoted Directive Principles of State Policy, Part IIIrd of the Constitution of India contains a long list of fundamental rights and can very well be described as Magna Carta of India. The Constitutional provision dealing with the welfare of the children may be categorized into two heads

- (i) Explicit provisions and
- (ii) Implicit Provisions.

2. Preamble of the Constitution of India.

Explicit Provisions dealing With the Welfare of the Children

Article 15 (3) empowers the state to make special provision in its laws for the purpose of giving favorable treatment to children. Though, no ground is mentioned preferential treatment is permitted on consideration of inherent weakness of children Article 15 (3), is an exception to Article 15 (1) and 15(2), the grounds of religion, race, caste, sex or place of birth. Mr. H.M. Seervai has formulated that since Article 15 (1) does not make age a prohibited ground of discrimination of the ground of religion, ace, sex or place of birth. He further pointed out that the reference to children in Article 15 (3) appears to be pointless.³ It is submitted that a specific positive provision serves the purpose of avoiding any controversy and demonstrates the concern however inadequate of the framers of the constitution that the state shall strive to promote the welfare of the people including children. Our solicitude for children and repulsion for the exploitation of tender age, Impelled our founding fathers to make a specific mention of them. Thus with the help of Article 15 (3), the state can make laws for

3. H. M. Seervi, 'Constitutional law of India' N.M.Tripathi Private Ltd and Bombay Sweet & Maxwell Ltd, London, Vol.1 1978. P.239.

the welfare of children giving them preferential treatment over other persons in the society. Article 24 prohibits the employment of children in factories etc. This Article does not create an absolute bar to the employment altogether. The employment is prohibited only in factories or mine or in any other occupation, which is hazardous. However, this provision is to be understood in the light of the realities and economic need of the parents and children in our society. As Article 24 prohibits, the employment of children below the age of 14 years, it is submitted that even with respect to children above the age of 14 years, all agreement either express or implied are voidable and are of doubtful validity in cases of exploitation⁴. Thus Article 24 is an additional precautionary measure securing distributive justice to children. In *Salal Hydro Project Vs. State of Jammu and Kashmir*⁵ the Supreme Court held that when ever the central government undertakes a construction project and engaged children for construction work, The Central Government should provide to the children of construction workers, who are living at the work site facilities for schooling and this may be done either by central government itself or through contractors. Article 39 (e) and (f) direct the states to evolve a policy eliminating the abuse of tender age and to free into avocation unsuited to their age and strength.

4. Article 23 of the Constitution of India.

5. AIR. 1984, SC. P-183.

The State is further directed to create social and economic conditions and infrastructure for the healthy development of children and provide facilities and climate for the exercise of freedom and maintenance of dignity. The State is also enjoined to protect the children against exploitation and moral and material abandonment. Under Article 45, a duty is imposed upon the state to provide free and compulsory education within a period of ten years of the commencement of the constitution for all the children until they complete the age of 14 years. This directive signifies that it is not only confined to primary education, but extends to free education whatever it may be up to the age of 14 years. Article 45 is thus supplementary to Article 24 on the ground that when the child is not to be employed between the age of 14 years, he is to be kept occupied in some educational institution. Article 45 along with Article 24 in terms supplements the clause (e) and (f) of Article 39, thus, ensuring distributive justice to children in matters of education. It is suggested that Article 24 and 45 should be amended so as to raise the age limits from 14 and 16 years. By doing so the children's education at least up to matriculation, would be ensured for the proper growth and development of their personality. There are various states Acts which stipulate the upper age limit of 16 years.⁶

⁶ Section 2 (c) of the M P Bal Adhiniyam, 1970, and Section 2 (4) of U P Children's, Act, 1952

Implicit Provisions dealing With the Welfare of Children

Beside the Articles discussed above which deals with the welfare of the children there are other provisions in constitution which through do not deal mostly but are of great significance in promoting justice to the children. These include Article 21, 23, 38, 41, 46, 47 and 51. Article 21 of the Constitution lays down that every person has right to life with human dignity. The Supreme Court repeatedly held that the right to life enshrined in Article 21 of the Indian Constitution encompasses the right to life with human dignity. Human dignity involves the right to basic education,⁷ basic conditions of work, fair wages and other necessary commitment. Article 23 Prohibits traffic in human being, beggar and other similar form of forced labour and exploitation. Although this Article does not specifically speaks of children, yet it applies to them and is more relevant in their context, because children are the most vulnerable section of the society. It is known fact, that many children are exploited even by the parents who allow their exploitation because of their poverty and in the absence of parents, their exploitation by close relatives is more deeper. implement the Act. Non implementation was treated as violation of fundamental right of the labours Article 21

7. Francis Corlie Mullins V/S Union Terretory of Delhi, A I.R., 1981, S.C., P.746.

They are deprived of education and made to do all sort of work injurious to their health and personality

In *People Union for Democratic Rights V/S Union of India*,⁸ the Court laid emphasis on the constitutional obligation imposed on the state to interdict violation of Article 23. It struck out against every form of forced labour. The most heinous crime against helpless children is that they are captured by criminals to indulge them in begging business. Some time the children of the tender age are forced for flush trade. The Apex Court in *Bandhu Mukti Morcha V U O I*⁹ has used the expression 'Beggar' bonded labour and forced labour. In Article 23 of the Constitution, as interpretative tools to expand the horizons of "right to life" enshrined in Article 21, "right to live with human dignity". The right and benefit guaranteed to the laborers under various labour laws, were made parts of basic human dignity and raised the status of fundamental right. An obligation was imposed on the state to implement the Act and no implementation was treated as violation of fundamental rights of the labourers under Article 21. Article 38 of the Indian constitution provides, that the state shall strive to promote the welfare of people by securing and protecting as effectively, as it may be a social order in which justice, social, economic and political shall inform all the institution of national life.

8 A I R 1982, S C 1473

9 A I R , 1984 S C , 802

Effective implementation of this principle result in promoting the welfare of the people through social economic and political justice and this in turn is expected to promote proportionally the child welfare.

Article 41 deals with the right to work, right to education and public assistance in certain cases. Though it does not mention children, the ending words...and in other cases of, undeserved want, “cover the children as the suffering children deserve the least fate, as in no case they can be held responsible for their past since. Hence it is the duty of the state to provide social assistance, to all the children who suffer for want of basic necessities of life. The implementation of this provision is also expected to promote the welfare of children, proportionately and ensure distributive justice to them. Article 42, requires the state to make provisions for securing just and human condition of work and for maternity relief. The measures for maternity relief are meant for expectant mothers and mother during pregnancy and after the child birth are expected to promote the health of children and to provide healthy environment for their bringing up.

Article 46, provides that the state shall promote with special care, the educational and economic interest of the weaker sections of the people, and in particular of the scheduled castes and the scheduled tribes, and shall protect them from social injustice and all forms of exploitation. The implementation of this principle, while promoting the economic and educational interest of the weaker sections

and scheduled castes and scheduled tribes, the children of these section of the society need the welfare measures most because of the appealing poverty and backwardness of their parents.

Article 47 imposes a primary duty upon the state to raise the level of nutrition and the standard of living of its people and improvement of public health. This it is the responsibility of the state to provide nutritious food to the children as the word “people” includes not only adults, but children also and perhaps this provision becomes more relevant in case of children as the malnutrition can cause irreparable damage to the personality of the child through mental retardation and blindness.

Article 51(c) of the Indian Constitution directs the state to foster respect for international treaty obligations. As such Article 32 of the Convention on the Right of the Child 1989 would be covered. Article 32 recognized the right of the child to be protected against economic exploitation and from performing work likely to interfere with his education.

It is thus quiet evident from the through examination of the provision of the constitution of India, that the underlying philosophy which it endorses about the Indian workers is that the first priority in the scale of social justice should be afforded to welfare of the children for the reason that they are the weakest among the weak and future well being of the nation depends undoubtedly on them.

CHAPTER - V

NATIONAL AND INTERNATIONAL PERSPECTIVES

NATIONAL AND INTERNATIONAL PERSPECTIVES

1. International Charter.

Children are considered as the nation's "supremely important national assets" and its living malleable potential. The future of any nation is largely determined on how its children grow and develop. The issues relating to the rights of the child, care and welfare have been constantly engaging attention of the universe.¹ The significance and the importance of the child lies in the fact that the child is the universe. If there was no child, there would be no humanity and there cannot be a universe without humanity. Therefore mankind owes to the child the best that it has to give.²

The need for providing protection and safeguards to children have first been stated in the Geneva Declaration of the Rights of the Child, 1924 and was recognized in the Universal Declaration of Human Rights, 1948 and in the statutes of specialized agencies of U.N.O.

-
1. Pawan Sharma: "Child labour, A Socio-Legal Study" Journal of Indian Law institution, 1994, Vol: 36, P-211.
 2. Miss. Y. Vishnupriya: International Concern for the Protection of the Rights on the Child' SCJ, 1992 Vol.2, P-16.

Art. 25 of the Universal Declaration of Human Rights in 1948 provide that “ motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

2. I.L.O. and Child Labour.

The earliest concern of any world body for the protection of children was of International Labour Organization The ILO has been playing an important role in the process of gradual elimination of child labour and to protect child from industrial exploitation.

ILO study entitled “ Children at work” has emphasized that the “ Children at work’ has emphasized that the “ problem of child labour cannot be solved only through legislation. In the developing countries it has unfortunately not been possible to put an end to child labour (despite the fact all most all the countries have comprehensive legislation in this respect)¹ It recognizes that like all social problems child labour is not an isolated phenomenon.² Child is not an unmixed evil about the advantages of the child labour. The ILO study point out

1. I.L.O “ Children at Work” 6 (1979).

2. Ibid.

In the developing countries today and within the limits of the opportunities open to them children who spend their time at work do at least keep clear of delinquency, begging, the marginal subculture of the street and other similar evils.³ There are both central and state enactment on child labour – the former covering mainly employment in industries and mining, and the later covering shops and other establishments.

The programmes of ILO focus their attention on five main issues.

- (i) Prohibition of child labour.
- (ii) Protecting child labour work.
- (iii) Attacking basic causes of child labour.
- (iv) Helping children to adopt to future work and
- (v) Protecting the children of working mothers.

A series of convention and recommendations have been formulated to regulate and abolish child labour. India is a party of the ILO conventions and as such has an obligation to adopt the ILO conventions. Till now 18 conventions and 16 recommendations have been adopted by the ILO in the interest of working children all over the world. India has ratified several ILO conventions. Some of the conventions have special provisions for countries like India, these lay

3. The Report of the Committee on Child Labour, (1979), New Delhi.

The Committee was appointed by the Government of India.

down lower standard than those to be followed by the developed countries. In the matter of labour laws relating to children, India tries to follow the standards set by the ILO conventions.

The very first ILO conference adopted a convention which fixed the minimum age of 14 years for the industrial employment of children. Its propose was to establish minimum standards valid for all sector of economic activity with a view to achieve total abolition of child labour below 14 years. The Indian laws and the ILO Conventions mainly deal with four matters

- (i) Minimum age for employment of children.
- (ii) Medical examination of children.
- (iii) Maximum hours of work; and
- (iv) Prohibition of night work for children.

In 1980 ILO submitted a report to the U.N's Sub Commission for fight against discrimination measures and the protection of minorities arrived at the finding that the Indian child labour is the most exploited.⁴

The 83rd International Labour Conference in Geneva has addressed a very important issue by including child labour on its agenda. The delegation from 173, ILO members countries took note of

4. Economic Times, New Delhi, April 8, 1980

the fact that the fundamental rights of the children are violated all over the world. Another ILO study of certain targets areas of India, Ghana, Indonesia and Senegal, shows that 25% of the children under the age of 15 years are economically active. Most of the young child workers hand over their earnings to their parents. A disturbing finding of the study is that there are more girl workers than boys and much of their work comprise unpaid house old jobs, mercifully, work is rare among children under ten, with the figure rising in the 10-14 age group.⁵

The ILO started the International Programme for the Elimination of Child Labour was started earlier in the decade. But the task before it is awesome, and it must work in unison with other agencies such as UNICEF to make any real progress.⁶ The ILO has entered into a memorandum of understanding with the government to extend the International Programme on Elimination of Child Labour (IPECL) in the counrtry.⁷

5. The Hindustan Times New Delhi June 15, 1996

6. Ibid

7. The Hindustan Times, New Delhi, May 9, 1997, P-14

3. UNICEF's Approach.

The General Assembly constituted and established the United Nation International Children's Emergency Fund in 1946. At the end of the postwar, reconstruction period, newly independent developing countries demanded the children's growing minds and bodies given specific considerations, and UNICEF's relief mandate was enlarged to include children's survival and development. The basic function of UNICEF is to help the governments of developing countries to improve the quality of life of their children.⁷ Its approach to development aid is the conviction that children are means, as well as the beneficiaries of national development and that enlightened social policies benefiting children are a prerequisite for sustained economic and social progress. Now, the International approach to children has changed dramatically once again. The idea that children have special needs has given way to the conviction that children have right the same full spectrum of rights as adults; civil and political, cultural and economic.

The UNICEF reaffirmed its commitment to its own procurement policy, through which it undertook not to buy from any supplier who exploited children.⁸

8. The Times of India, New Delhi, December 12, 1996, P-7

Referring to the child labour position in India the UNICEF represented various studies to say that child labour was increasing in urban areas and decreasing in rural areas, although the absolute numbers of child labourers in rural areas was high that in urban areas.⁹

4. GATT AND WTO.

Child labour is a universal phenomenon and rising everywhere, UNICEF's state of the world's children report for 1997 has zeroed in on the strange paradox that while countries around the globe are paying lip service against this phenomena, In India, a large number of children spend their growing years toiling in order to contribute to the meager family income. This high incidence of child labour has attract a lot of International attention.¹

The most eventful happening of this century on April 15, 1994 when almost the entire world decided to formally sign the GATT (General Agreement of Tariff and Trade Agreement). When 125 countries of the world, including India, decided to slash the tariffs up to 40 percent for trade among themselves.² All speculations were put to rest when agreement was signed. The historic pact created a new multilateral trading system,

1. Civil Services Chronicle, New Delhi, November 1994, P-12

2. Competition Master, New Delhi, July 1994, P-961

which can easily be termed as the biggest package of market access concessions ever negotiated signed at the backdrop of an agreement arrived at exactly four months ago at Geneva, on the conclusion of Uruguay round of negotiations, the agreement is expected to open new vistas in international trade.

5. Tom Harkins Bill and Rugmark Level on Carpets.

In the past, punitive measure resorted by the developed world against the developing countries to check this social evil hardly had any impact because most of the above mentioned countries simply did not bother. But then came the tumultuous events of the 90's, the collapse of the Soviet Union, the free world trade from the clutches of a destructive ideology, the signing of the historic GATT agreement, peace agreements galore and the wave economic liberalization that galvanized trade and commerce into unprecedented levels. Overnight, the world economic scenario under went a drastic transformation.¹

1. Robert Castle, DP Chaudhri, Chris Nyland and Trang Nguyen: Labour Clause, The World Trade Organization and Child Labour in India; The Indian Journal of Labour Economics. Vol.40, No1, 1977, P.51.

According to recent International Labour Organization estimates, around 78 million children all over the world are involved in regular, paid labour, a vast majority happen to be in Asia 'predominantly in China and India. For India the figure was 14 percent, for China¹², for Pakistan 18, and for Bangladesh 30,² seeing the above figures, it is natural to want to fall in, which demand such as the one made by the Harkins bill in the U.S.³ The U.S through the Harkins bill has called for a ban on the import of items made by the child labour or the demand by some organizations that products be labeled as "Made with child labour" in the hope that consumers will boycott them. It, therefore, seems ironical for the U.S. to impose trade sanctions and consumer boycott of products made from child labour especially when it is hardly free from this problem sanctions, it has been found, adversely affect rather than help to the children, there is some evidence that in Bangladesh, as employer have evicted children from the labour force for external sanctions, child prostitution has risen. Similarly bans are also possible in European countries, specially Germany and Switzerland in collaboration with the Indo-German export promotion programme, established an organization called Rugmark in 1994. This Organization was supposed to work as a self- appointed certifying agency.

2. India Today, Magazine, New Delhi July14, 1997,P.58.

3. Ibid.

A Rugmark label on carpets manufactured in India would mean that no child labour was involved in the manufacture. However, manufacturers and exporters got worry of the plan as it was seen as an unwelcome intruder between exporters and importers. It was also seen as to dread scourge of bureaucracy. In India Bureaucracy means corruption, Rugmark certification would involved unmitigated corruption says one of the exporter”⁴.

The German, found that Rugmark is no officially recognized either by Government of India or by ILO, M.P Joseph Says, that National Programme Coordinator for ILO’s International Programme on Elimination of Child Labour (IPEC), ILO has no direct association with Rugmark and it does not support imposing trade sanctions.⁵ “Rugmark is not a solution to the problem of child labour” says Dr. Neera Burra, a sociologist and the author of "Born to Work, child labour in India". She points out those carpet industries accounts for only “a very insignificant part” of child labour problem. Dr. Burra believes that any attempt at policing would lead itself to misuse and corruption.⁶ .

4. A.U. Asif: The Politics of Child Labour; ~~Nation~~ Nation and the World, August 16, 1995, P-26, 27.

5. Ibid at 29.

6. Ibid.

Unfortunately, the problem does not exist only in India but it is prevalent much of the Third World. The European Parliament also passed a resolution on child labour mention Pakistan, Nepal, China and Brazil. It was only when the hard economic repercussions of the failure to check this social evil sunk in, that the developing countries decided to take a serious look into the issue.

In short, various declarations by the United Nations General Assembly to protect the Right of the Child and its various agencies like ILO, UNICEF and others have made considerable efforts to ease the problem of child labour. The efforts of various agencies, however, have not yielded the desired results due to financial crunch. The labour standard in WTO should be used to protect the interest of child labour and not the interest of the super powers.

6. National Policy on Child Labour.

Keeping in view the miserable conditions of child labour, the Government of India expounded National Policy on Child labour Welfare in 1947 giving further substance to all needs of the children. The objective resolutions on National Policy clearly states:¹ It shall be the policy of the states to provide adequate service to children before and after birth and through the period of growth, to ensure their full physical, mental and social development.

1. Resolution of National Policy for Child Labour, 1974

The states shall progressively increase the scope of such services so that, within a reasonable time all the country enjoy optimum conditions for there balanced growth.”

The Parliament, while adopting a resolutions on the National Policy for Children indicated fourteen measures to attain the objectives contained in the objective resolutions, 1947. The National Policy on Child Labour made it clear that while formulating programmes in different sectors to promote the welfare of the children, priority should be given to:

- (i) Preventive and primitive aspects of child health.
- (ii) Nutrition to infants and children in the pre-school age along with nutrition for nursing and expectant mothers.
- (iii) Maintenance, education and training of orphan and destitute children.
- (iv) Crèches and other facilities for the care of children of working or ailing mothers; and
- (v) Care of education, training and rehabilitation of handicapped children.²

The main features of the National Child Labour Policy are as follows:

2. Dr.P.L.Mehta and Sunil Deshta, ‘Philosophy of Child Labour Welfare in Retrospect and Prospect ‘ Civil & Military Law Journal, Deep and Deep Publication New Delhi, Vol. 24, No. 1 June- March: 1988, P- 223.

1. It will be ensured that the legal provisions pertaining to prohibition of child labour in hazardous employment, regulation of their conditions of work in other employment and provisions pertaining to health, safety, welfare, amenities and other benefits are strictly implemented so that child labour does not at the mercy of the employers under highly exploitative in human conditions.
2. Followings projects will be undertaken in areas of eradication of child labour :
 - (i) Ensuring that all the poor families from which child workers come are covered by the income and employment generation programmes. This will enable them to cross the poverty line In addition to the funds of the existing programmes additional funds will be spent in these areas to cover all the families in three years.
 - (ii) The programmes pertaining to education and vocational training.
 - (iii) Special schools will be opened to rehabilitate the children removed from the prohibited employment and to provide welfare inputs to the children working in the permitted employment. The School for rehabilitation of child labour will provide non-formal education supplementary nutrition and

vocational training along with a stipend so as to compensate the loss of income to their family.

3. The programmes of education, health, medical care, supplementary nutrition as well as of income and employment generation for the parents of child labour is most relevant in the contest of the child labour. If these programmes are implemented well, the problem of child labour will be eliminated gradually. Children's programmes should find a prominent part in our National Plans for the development of human resources so that the children grow up to become robust citizens physically fit, mentally sound, and alert, morally, healthy, endowed with the skill and motivations needed by society. With a view to achieve social justice various aims laid down in National Policy for working children and for their welfare it emphasized that the state will provide necessary legislative and administrative support. Facilities for training of personnel will be provided to meet the needs of exceeding children's welfare programmes.³

-
4. K.M.H.Rayappa, Basic Framework for the Welfare of the Working Child under Indian Constitution -A Critical Appraisal, SCJ, Vol. 3 (1986) P-17.

National Child Labour Policy on August 12th, 1987.

The Government of India has announced in the Parliament a three point National Policy on Child Labour on August 12th 1987 to prevent exploitation of children and rehabilitate them after their withdrawal from prohibited employment. The Policy consists of three main ingredients.

- (i) Legal action plan.
- (ii) Focusing of general welfare and development programmes on child labour and their families, and
- (iii) A project based on the plan of action.

Under the legal action plan and the emphasis will be on strict and effective enforcement of the provision of the Child Labour (Prohibition and Regulation) Act, 1986, the Factories Act, 1948 and the Mines Act, 1950. It is proposed under the policy in the first phase, 30,000 children in 10 projects will be withdrawn and looked after by the government. A sum of 11 crore annually would be spent on them. This is criticized that “ the rehabilitation segment of policy also is such too weak to make any impact, for in the first phase about 30,000 child workers are to be free from prohibited areas of employment and rehabilitated. The National Policy on Child Labour, expressed the views that the Act, of 1986 constituted the core of the legal action plan While the Act. Suffer with many drawbacks it is difficult to share the confidence that latest

would by any different.⁴ it is well know that legislation alone cannot bring to an end to child labour. A National Policy on Child Labour was formulated in connection with the legal measures to address the socio-economic issues on child labour and to provide a framework for a concrete programme of action. The Policy encompasses action in the field of education, health, nutrition, integrated child development and employment.

7. The Education Policy for Child Labour.

The economic exploitation of children in India has always been as area of concern, while official sources estimate the number of child workers to be 17.36 million, Other have placed the figure at the much higher level of 44 million High as they are even these figures do not reflect the real tragedy of the working child in India. Most children work in highly exploitative conditions and all are deprived of even the most minimal educational facilities⁵.

4. C. Jayram, Protection to Child Labour-A Myth' SCJ: Vol. 1 1988, P-49-50

5. The Child and the Law, Papers from the International Conference on March 1994 in New Delhi, P-36.

In the typical environment in which Indian children grow up the concept of a non-working, non-school going child simply does not exist. Any effort to deal with the issue of child labour therefore has to address the question of education.

i) Education Policy and Nonformal Education for Child Labour.

In 1986 and 1987 the Government of India adopted new set of policies towards working children which for the first time reflected the privately held view of officials in the Ministry of Labour and Education. The National Policy on Education 1986 set a target where all children who attain the age of 11 years, will have received five years of schooling, or its equivalent in a non-formal education, with this goal in view, 4,90,000 non-formal education centers are to be opened nationally to supplement the formal education system. Since non-formal education is planned and organized at the local level, centers for child labour will be set up in both urban and rural areas within the environment of local voluntary agencies and Panchayat Raj institutions.

In dwelling areas where a child is unable to go to school because of one reason or the other, the child goes to the school in shape

of Non-Formal Education.¹ The Scheme which was originally started in 1987 has been revised in 1993 to provide flexibility relevance of curriculum, diversity in learning activity through decentralized management . It covers 10 educationally backward states and areas with concentration of working children in non-backward states as well.²

A major activity undertaken under the National Child Labour Policy (NCLP) is the establishment of special schools to provide non-formal education, vocational training, supplementary nutrition etc. to children with drawn from employment. Under the project based action plan of the policy were started in Andhra Pradesh, Bihar, Madhya Pradesh, Maharashtra, Orissa, Rajisthan, TamilNadu, and U.P.³ Efforts will be made to link the non-formal education institutions with the formal educational system, so as to enable child workers who have completed the formal education, to continue their school in the latter, details of a scheme of incentives and assistance for families who forced to their children in wages or quasi- wages

1. Employment News, New Delhi, September13, 1997, P.1

2. Id at 2.

3. Yojna, Rakesh Press, A-7 Narain Industrial Area, Phase II, New Delhi, July 1997, P.24.

employment are to be worked out in consultation with state governments. Scholarships will be given to working children who come from especially deprived families engaged in occupations like scavenging to ensure that they are enrolled successfully and complete the non-formal education courses⁴.

ii) Universal Elementary Education

Free India made a solemn resolve to give its children free primary education but after 50 years of independence, it is still battling with problems of a high dropout rate and lack of funds, schools and teachers.⁵ According to United Nations Human Development Programme's Annual Report, India spends just four percent of its gross domestic product on education, the bulk of which goes towards higher education.⁶ The Universal Elementary Education (UEE), as envisaged in Article 45 of the Indian Constitution which had set a target of ten years to achieve this, has not only remained an unattained goal, but education in India today is a story of stark desperation that was introduced by the same guiding principle meant for making the nation prosperous and enlightened.⁷

4. Ibid

5. The Hindustan Times, New Delhi, August 22, 1997, P.9.

6. The Times of India, New Delhi, April 27, 1997 P.19.

7. The Hindustan Times, New Delhi, August 20, 1997, P.2

Elementary education in India is characterized by fictitious enrolment, high dropout rates and a constantly counting number of illiterate children. Figures show that although the number and percentage of children attending school is increasing and number of schools has grown, India's share in the world's illiterates has also risen. In absolute terms the number of illiterates in the country is increasing as a result of the high dropout rate among children in the first five years of schools.

It is against this background that the Government of India through its plans and strategies has been grappling with the problem of bringing children to school. The Government of India has asserted before the Supreme Court of India that by the year of 1991, it has provided primary schools within one km, distance to 8.26 Lakh habitation containing about 94 percent of the population.⁸ In order to achieve the target of Universal Elementary Education (UEE) the State Government abolished the tuition fees at the primary stage in the Government Sponsored Institutions. There is however, another side of the story, that is the steady fall in the share of total outlay for Elementary Education from 56 percent in the first Five Year Plan

8. J.P. Unikrishnan Vs The State of Andhra Pradesh AIR 1993, SC 2178.

to 30 percent in the Fourth Five Year Plan. But since the rate of growth of population is much faster than the rate of growth of education, the goal of universalization of the elementary education has not yet been realized, inspite of the fact that more than 20 years ago education was brought on the concurrent list by means of a Constitutional Amendment of 1976.

The National Policy on Education, 1986 and its Programme of Action (1986) gave the highest priority to making elementary education as universal. To retain the child in their school and to make the school environment attractive a new scheme called 'Operation Black Board' was launched in 1987-88. There are striking disparities in access to Elementary Education – disparities as between regions, rural and urban areas, boys and girls and have and havenot.⁹ In short, the government would also endeavor to provide voluntary part-time non-formal education for working children rather than press for compulsory universal primary education. The only apology offered with respect to child labour was to accept its existence as a harsh reality.

9. Savita A. Sharma, "More Snakes than ladder", The Hindustan Times (Delhi Edn), August 29.1995.

8. Health Policy for Child Labour.

Responsibility for carrying out medical inspections of children lies with the State Governments. Progress among the various states is uneven and while a few have good programmes, and others are lagging behind. In those states where a health service exists, many, and in some cases all, rural primary school pupils receive regular health checks. However, working children unable to attend school are not covered by such scheme. The Ministry of Health and Family Welfare will recommend to the state governments that intensive medical inspection of children should be taken up in areas where child labour is prevalent, and that the school health service should include working children.

9. Government Programmes for Child Labour.

i) Anti Poverty Programme.

The Central Government has developed a number of employment generating programmes for poor families and child labour in rural areas. The most disadvantaged families will be given assistance to raise themselves above the poverty line.

ii) Rehabilitation programme.

The project has selected those occupations where the concentration of child labour is especially high. Resources for the implementation of all rehabilitation programmes would both from the State and the Central Governments and also from funding agencies like the World Bank. The Government has also come to realize that no great successes in this field can be achieved without creating a consciousness within society itself. For this purpose the Ministry of Labour will give grants up to 75% of the total project cost to any Social or Voluntary Organization willing to under take rehabilitation programmes in the affective area. In India efforts are made to eliminate child labour in a phased manner. In the first phase, efforts will be made to remove two million children working in hazardous industries. The Government of India has sanctioned 63 new project costing about Rs. 46 crore and covering 11.2 lakh children in hazardous industries. Recently the Government has set up 76 children labour projects for the rehabilitation of around 1,50,000 children working in hazardous occupations This information was given in Rajya Sabha by the Minister of State for Labour, M.P. Veerendra Kumar.¹

1. The Hindustan Times, New Delhi, August 1, 1997, P-9.

Further a total of 15,000 schools are being setup in different parts of the country to rehabilitate child labourer and providing compensation to families whose children are withdrawn from hazardous jobs.² Education even if an formal, is must for working children as it will not only make a child emotionally secure and it will make him aware of his rights and therefore, less susceptible to the sub-human exploitation which is his lot at present.

iii) Rehabilitation Programme on August 15, 1994.

A Strong momentum is build up in India for the abolition of child labour. A major programme was launched in August 15, 1994 for withdrawing child labour working in hazardous occupations and rehabilitating them through special schools. Under the programme a total of two million of children are sought to be brought and put in special schools where they will be provided non-formal education, vocational training, stipend, nutrition and health check. The Prime Minister has repeated his call to abolish child labour in the meeting of the Labour Minister of Non- aligned and other developing countries, held in Delhi 1995. A plan of Rs.15 crore was made for child labour elimination programme during VIII Five-Years Plan (1992-97).

2. Padma, 'Child in Servitude', SCJ, Vol.3, 1995, P-3.

The budgetary allocation was substantially stepped up after the launching of the programme for rehabilitation of child labour working in hazardous occupations in August 1994. During the year 1995-96, out of the budget allocation of Rs. 34.40 crore, an expenditure of Rs. 34.29 crore was incurred on child labour related programmes. The allocation for 1996-97 is Rs. 56 crore.

iv) Common Minimum Programme.

The Common Minimum Programmes by the Government to seeks to eliminate child labour from all occupations and industries and making free and compulsory elementary education and fundamental rights. While and Ministry of labour can continue to be responsible for elimination and rehabilitation of about 2 million children working in hazardous occupations, the responsibility for providing compulsory education to the children would have to be of the Department of Education keeping in view the policy of the government as indicate in Common Minimum Programmes (CMP), wide spread consultations have been initiated for the Amendment to the Child Labour (Prohibition & Regulation) Act, 1986.

V) Project to Open up Minds of Working Children.

Open Minds, a unique project to get working children in the country in to the schools, will soon be started by the United Nations Children Education Fund, the Project, to be launched in ten cities across the country, will be funded by the Procter and Gamble. Addressing a Press Conference here today. Mr. Alan Court, Country Head, UNICEF, said the aim of the Programme was to get children in the age group 6-14 years into a school environment. He Pointed out that as many as 100 million children in this age group were not attending school, Mr. Alan Court informed that UNICEF would be networking with the registered Non-Governmental Organizations working with children in these cities. He said that it was possible for children who had never attended school to take to a system of formal education. Mr. Court said that in Andhra Pradesh an NGO had demonstrated that these children could be brought into the main stream. They worked with the child labourers for a few months and prepared them for formal education. He said that the aim of "To Open up Minds Programme" is to eliminate child labour in India.

Mr. Bharat Patel, Chairman, Procter and Gamble, said the company had committed to a support the project at least for a period of three years, but we are hopeful that it will last longer he said that the

company today handed over a cheque of Rs. 50 Lakh to the UNICEF as first installment for the project.³

vi) National Authority to Eliminate Child Labour.

The Government has set up a National Authority as a part of measures to eliminate child labour from all hazardous industries by the end of the century (Labour Minister P.A Sangma informed the Rajya Sabha), about the provisions which has been made by the government.⁴

The constitution of the National Authority for the Elimination of Child Labour which has adopted a detailed plan of action requiring the convergence of services and schemes of the Central and State Government at the implementing the level and a National Child Labour Project (NCLP) which is being undertaken in 12 different areas of the country.⁵

3. The Hindustan Times, New Delhi, February 8, 2000, P.5.

4. Indian Express, Chandigarh, March 21, 1995.

5. National Human Rights Commission, Annual Report, 1995-96, P-29.

10. Report of the Royal Commission on Labour.

Child labour laws have been adopted in all civilized state and are enforce in England and nearly all the government of Europe. They are found on the principles that the supreme right of the state to the guardianship of children controls the natural rights of the children, themselves conflicts with parental right. The supervision and control of minor, is a subject which has always been regarded as within the province of the legislative authority. How for it shall be exercised is a question of expediency which it is the province of legislature to determine the legislature has fixed an age limit below which child shall not be employed. The legislature has also under certain limitation prohibited the employment of children during certain hours at night.

These laws also forbid the employment of children in one or more kinds of work until they have passed a fix child's age is demanded and working permits or employment certificate must be obtained by children and placed on file in the establishment before they can be employment of persons of tender years in dangerous occupations.

The legislature in forbidding the employment of children in dangerous occupations, has delegated to the executive officer the power of determining what occupations has delegated to the executive officer the power of determining what occupations are dangerous. When the legislature confines to employment is dangerous or not. It merely

confers upon officer the authority to find the existence of a fact, and upon his finding the legislative act becomes operative.

The provision empowering health authorities and other to extend the list of prohibited occupations for children of certain ages has been held not to be an unwarranted delegation of legislative authority.

Most of these laws hitherto enacted are defective in that they fail to cover all the occupations from which children should be excluded. In fact, the rapidly changing industrial conditions render it practically impossible to draw up a list of occupations that will be complete for any length of time, even though it is those who are experienced in drafting child labour laws now is to use general terms instead of a specified list. Agriculture and domestic services are, however, frequently exempted from this general prohibition.

One of the most important Acts of the International Labour Conference which held at Washington in October 1919, was the adoption of a draft convention prohibiting the employment of children under fourteen years of age in industrial undertakings. The fact that so much progress has been made in the past decade in the enactment of child labour legislation and comparatively high age limits has been so generally established, especially for factory work, does not mean that premature employment of children is eradicated. There is serious danger that since the most sensational stages in the fight against child labour have passed, public opinion will become apathetic and not

perceive the inadequacies of laws that may have at one time been a great step in advance. Unfortunately most of the laws bears the conflict with short sighted legislator as well as with powerful interest who either looked upon employment of children as necessary to their prosperity or considered prohibitive legislation an encroachment on their business right.

In addition to the minimum age limit for entrance to general factory work an additional period of maturity is required for entrance to a number of extra hazardous occupations. The first group of occupation may include such employment as the cleaning and oiling of machinery, the adjusting of belts, the operations of machines. Saws or stamping, washing, grinding and mixing machines, and the manufacture of lead products or composition containing poisonous acids, while in the second group is work in mines at furnaces or on rail roads, in the outside creation of electric wires or in manufacture of explosives

Children under 12 years of age may not be employed in any factories under the factories Act of 1948. The factories Act of 1922 provides that a person between the age of 12 and 15 years subject to their being certified as physically fit may be employed for not more than 6 hours a day the age for half times were 9 to 14 years before that date, and the maximum hours were six in textile factories and seven others, children working for the full day of six hours must have a rest period of half an hours continuous work but the day is restricted to 5 and

1/2 hours works no interval is necessary or some difficulty has arisen from the practice of employing children under different names and with different certificate in two factories on the same day. It is almost impossible to prove that a manager is knowingly employing children who are also employed. In 1926 the legislature added to the factories Act, this Act made it possible to prosecute the parent or guardian of the child who is employed in mills. Special vigilance and the use of this section have combined to eliminate or greatly reduce the evil in the Ahmedabad cotton mills where the practice was formerly prevalent but similar action does not appear to have been taken in the Bengal Jute mill where certifying surgeon report the existence of a similar abuse. It is recommended that special and continuous attention should be given to this matter by the local government and its officers. Persons who are 15 years or over are treated adults during recent years there have been a tendency to employ children and child labour has been replaced by adult labour and particularly women employed in a factories to the total number of operatives has arisen as that of children has fallen, the latter is now believe 4%. For reason we had already given and because many children do not come to the Industrial area till full time work is available for them, we regard this as a commendable tendency.

CHAPTER - VI

JUDICIAL RESPONSE

JUDICIAL RESPONSE

Judiciary in India under its policy for attainment of social Justice has been very attendant to give effect the rights of children in general and child labour in particular. Indian judiciary has put an earnest efforts and shown deep interest in promoting the welfare of child workers. In this spirit an honest attempt has been made to visualize the judicial response to child labour welfare as an effective instrument to improve the status of children in accordance with the spirit of the constitution. A very positive development has been made by the Supreme Court in various historical pronouncements relating to children's right to education and work, child welfare, minimum wages, freedom from bondage and dignity, health and safety of the children of the country.

Education is the very foundation of good citizenship and a principal instrument to awaken the child. Education nourishes intellectual advancement to develop dignity of person without which there is neither intellectual excellence nor pursuit of happiness¹. The abolition of child labour is preceded by the introduction of compulsory education. Compulsory education and child labour laws are

1. A R. Reddy : Right to Education and Judicial Response, SCJ, 1987
Vol.1, p.1.

inter linked ². Article 24 of the Indian Constitution bars employment of child below 14 years of age. Article 45 is supplementary to Article 42 for if the child is not to be employed below the age of 14 years he must be kept occupied in some educational institution.

In the recent years, the judicial process has taken a lead to read the directives into fundamental rights. As a result of the new interpretative approach of the courts, the Non-judicial rights have acquired the status of fundamental rights³ Right to Education, a directive principle embodied in part IV of the Constitution acquired the status of a fundamental Right.

The Court in a series of cases ⁴ unequivocally declared the right to education is an integral part of right to personal liberty embodied in Article 21 of the Indian Constitution. The judicial mandates clearly demonstrate that right to education is necessary for the proper flowering of man, his mind and personality.

2. R.Ravathi, "Child Labour, A Challenge to the Nation," (1992) SCJ, Vol.3, p.21.

3 Hussain Ara Khatoon (No.1) v Home Secretary, State of Bihar, A.I.R. 1979 S.C. 1360.

4. A.V. Chandel V Delhi University A.I.R. 1978 P. 308,

Hence, right to education is one of the facets of right to personal liberty⁵. The Andhra Pradesh High Court in its momentous decision in *Murali Kirshan Public School V. Regional Joint Director of School Education*,⁶ The Court pointed out: “ Right to education to Dalits is a fundamental right and it is the mandatory duty of the state to provide adequate opportunities to advance educational interests by establishing schools.”

This landmark decision has paved the way for better educational opportunities for Dalits. The Dalits, hitherto neglected specimens of humanity, who are dragged their earthly existence under a grinding poverty have now been encouraged to claim their right to education as a fundamental right and compel the state to take positive action to provide educational facilities to their children.

Article 15 (4) empowers the state to make special provisions for the advancement of socially and educationally backward classes. The object of clause (4) of Article 15 is to improve the educational opportunities of the neglected segments of the society. It is submitted that in the beginning the courts maintained that Article 15 (4) is only an

5. R. Revathi, “Right to Education and Judicial Response—A Critique “ SCJ: 1993, Vol.3,P-26

6. A.I.R. 1986, A.P, 204.

enabling provision and does not confer any right on the weaker section to seek better educational facilities⁷.

In *A.V. Chandel V Delhi University*⁸ the Delhi High Court held that education is a fundamental right under our constitution. The Court observed: "The law is, therefore now settled that the expression of "life and personal liberty" in Article 21 of the Constitution includes a variety of rights, though they are not enumerated in part III of the constitution, provided that they are necessary for the full development of the personality of the individual and can be included in the various aspects of the liberty of the individual. The right to education is therefore, included in Article 21 of the Constitution."

A new trial has been blazed in labor jurisprudence by the Supreme Court in *Mohini Jain V. State of Karnataka*⁹. Where the Supreme Court has gone to step further while declaring in unequivocal words daringly that the right to education is concomitant to fundamental right

7. Supra note 1.

8. A.I.R. 1978, Delhi, P.308.

9. AIR 1992, S.C. 1858 at 1864.

enshrined under part III of the Indian Constitution. Justice Kuldip Singh had relied in *Francis Corlie V. Union Territory of Delhi*¹⁰ and *Bandhua Mukti Morcha V. U. O. I.*¹¹ cases, and observed, "Right to life is the compendious expression for all those rights which the court must enforce because they are basic to the dignified enjoyment of life. It extends to the full range of conduct, which the individual is free to pursue. The Right to education flows directly from right to life. The right to life under Article 21 and the dignity of an individual can not be assured unless it accompanies by the right to education. The State Government is under an obligation to make endeavor to provide education facilities at all level to its citizens."

The Apex Court very rightly held that Article 19 of the Constitution can be appreciated and fully enjoined unless a citizen is educated and conscious of his individualistic dignity. Gajendra Gadkar J. In *University of Delhi V Ram Nath*¹² rightly said that Education is the one that lends dignity to a man. He observed Education seeks to bind up the personality of the pupil by assisting his physical,

10. AIR. 1978 . S.C 597.

11. AIR. 1984 . SC. 802.

12. AIR. 1963, SC 1873.

intellectual, moral, and emotional development, despite the Constitutional directives and the National Policy on Education, we have the largest number of the world 's illiterates and children without education. A very positive development in this direction is the Supreme Court decision in Unni Krishnan J.P. V State of A.P.¹³ in which the Court says that "The Right to free education up to the age of 14 years as a fundamental rights within the meaning and scope of Article 21 of the Indian Constitution".

For the first time in the judicial history of Unni Krishnan's case the Supreme Court has declared that right to education up to 14 years as a fundamental right with the result that it will necessarily enable the poor children to have access to education which will enable them in achieving social, economic and political justice. It is thus quite clear that the courts in India have shown positive and progressive response in promoting education among the poor children ¹⁴. It is hoped that these divisions will promote healthy trends in promoting compulsory education among the working children and ultimately make them realize their rights contained for them in the labor welfare legislation.

13. A.I.R 1993, SC.2178.

14. P.L. Mehta & Sunil Deshta, Judicial Response to Child Labor in India, Cochin law Review, Coachin University, 1996, P-177.

The intention of the framers of the Constitution was clear that education should be the tool in the growth of any nation. Their purpose to include this right in the Directive Principles of State Policy, considering the limitations of the state at the time of the promulgation of constitution were also very clear to make it a total responsibility of the state in year to come. Now that 49 Years have already passed, but the state's efforts have failed to implement the moral and legal commitments of free and compulsory education up to the age of 14 years.¹⁵ In *M.C.Mehta V State of Tamil Nadu*¹⁶ the Court held that the children cannot be employed in match factories which are directly connected with the manufacturing process as it is a hazardous employment within the meaning of Employment of Children Act, 1938, They can however be employed in packing process but It should be done in area away from the place of manufacture to avoid exposure to accident. Every child must be insured for a sum of RS. 50,000/- and premium to be paid by employer as a condition of service.

15. Prof. Saleem Akhtar, 'Child Labour, Right to Education, A Judicial Trends in India', Aligarh Law Journal 1996 vol.XI,P-144-145.

16. AIR 1991 SC. 417

The decision of the Karnataka High Court is another milestone in *Bapuji. Educational Association V. State of Karnataka*¹⁷ the Court held that.

“Among various types of personal liberties which can be regarded as included in the expression ‘person liberty’ used in Article 21 of the Constitution, education is certainly the foremost. Therefore, Article 21 necessarily includes the right to establish and administer educational institutions of the choice of the citizen or groups of citizens. This is also implicit in Article 30 of the constitution. Certainly, even without Article 30 of the constitution, the minorities would have had the same right under Article 21 and 19 (1) (g).”

Thus the recent judicial craftsmanship the right to education is a positive progressive to secure in particular for the children of the weaker sections of the society, the proclaimed socio-economic justice.¹⁸ The Supreme Court has introduced new method in the form of Public Interest Litigation to provide justice to the poor and weaker sections of the society¹⁹ Philosophy of public interest litigation

17. AIR. 1986 Karnataka, 149.

18. Supra note 15 at 147.

19. S.P.Gupta V Union of India, AIR 1982, SC,149.

is to vindicate and promote public interest by rendering help to those people of society who are unable to approach the court because of their poor economic conditions. The issue of locus-standi has arisen in a number of cases ²⁰ before the Supreme Court. The history of public interest litigation began when the Supreme Court entertained a latter, sent by post as public interest litigation in People's Union for Democratic Rights V Union of India ²¹ popularly know as Asiad Case. The writ petition was based on various instances of violation of the provision of the Minimum Wage Act, 1948, The Equal Remuneration Act, 1976, The Employment of Children Act, 1938 and the Inter-State Migrant Workmen (Regulation of Employment and Conditions of Service) Act, in 1979. In these cases J. Bhagwati observed that,

Article 24 of the Constitution which provides that no child below the age of 14 shall be employed to work in any factory or mine or engaged in any other hazardous employment". In this regard court hoped that every state government will take the necessary steps in this behalf without any undue delay,

20. Ratlam Municipality V Vardhi Chand, A.I.R., 1984, SC 1622.

21. AIR, 1982, SC, 1473..

because construction work is undoubtedly a hazardous work and it is clear, by constitutional prohibition that no child below 14 years can be allowed to be engaged in construction work.

Further, a high water mark in the application of Article 24 of the Constitution has been reached in the decision of the Supreme Court in the labour working in Salal Hydro Project V State of Jammu and Kashmir²² where in the court reiterated the above ruling. It was held that the construction work is a hazardous employment and children below 14 years can not be employed in this work.

The Court maintained that child labor is an economic problem. Poor parents seek to augment their meager income through employment of their children. So, a total prohibition of child labour in any form may not be socially feasible in the prevailing socio- economic environment. Article 24 therefore, puts only a partial restriction on child labor. The court further observed that so long as there is poverty and destitution in this country, it will be difficult to eradicate child labour.²³

In Sheela Barse V Secretary, Children Aid Society & others²⁴, the Supreme Court observed:

22. A.I.R. 1984 SC, 183.

23. Ibid.

24. (1987 SCC.50 to 55)

“If there be no proper growth of children of today, the future of the country will be dark. It is the obligation of every generation to bring up children who will be citizens of tomorrow in a proper way. Today ‘s children will be leaders of tomorrow who will hold the country’s banner high and maintain the prestige of the Nation.”

In *M.C Mehta V State of Tamil Nadu*²⁵ The Supreme Court has identified nine major industries as hazardous in which child labour is banned. These are

- (I) Match making at Sivakasi in Tamil Nadu
- (II) Diamond polishing in Surat
- (III) Precious stone polishing in Jaipur
- (IV) Ferozabad, Glass industry
- (V) Brasware Industry in Moradabad (U.P)
- (VI) Handmade carpet Industry in U.P, Mirzapur and Bhadohi
- (VII) Aligarh Locks making Industry (U.P)
- (VIII) Slate Industry at Markpur in (A.P)
- (IX) Slate Industry at Mandsaure in M.P.

The observation of the court are giving true affect and sprit to the neglected constitutional dictates which have been mentioned in Art.24 of the Indian Constitution. The Supreme Court has always, regarded it as its duty to come to the rescue of those deprived or

25 A.I.R. 1997, SC. p. 699 at 700

vulnerable sections of Indian community in order to help them realize their economic oppression and exploitation in hazardous industries.

The Judiciary has directed the State Governments to enforce the statutory requirements of the Factories Act 1948, for providing recreation facilities and medical aid to the workers of match factories at Sivakasi. There is a plethora of statues to prevent the misuse of children in hazardous employment and to protect the general rights of children. The judiciary has consistently expressed grave concern regarding the flouting of the spirit of those legislation by the employers of the child workers. It has to a great extent made significant contribution to the welfare of child labor. The Court has endeavour to uphold the spirit of these legislation. The glaring decisions which deal with the payment of minimum wages to children,²⁶ protection of their fundamental rights²⁷, sexual exploitation of children in flesh trade²⁸ and employment of children in hazardous occupation²⁹ clearly reflect the judicial wisdom and its love to the welfare of the child labour. The effect of those decisions is that the child workers

26. Supra note 18 at 417.

27. Bandhua Mukti Morcha V Union of India A.I.R. 1984 SC 802.

28. Vishvajeet V Union of India AIR 1990 SC. 1412.

29. Supra note, 21.

have been safeguarded against the exploitation tendencies of their employer and has paved a strong path to regularize their working hours, fixing their wages, laying down rules about their health and education.

Article 6 of the International Covenant on Economic and Social Rights recognizes the right to work. It is recognized by Art.23 of United Nations Declaration of Human Rights under Articles 41 the State promises to make effective provisions for securing the right to work. However, there is claim for such right to be included into the fundamental rights of an Indian citizen, it has not yet materialized. The courts in India have necessarily had to accept a restricted role in its realization.

In *Bandhua Mukti Morcha V Union of India*,³⁰ the Supreme Court held that certain workers were living in bondage and under inhuman condition was initiated, It was not expected from the Government that it should raise a preliminary objection that no fundamental rights of the petitioner or the workmen, on whose behalf the petition has been filed, infringed. The Court speaking through Justice Bhagwati further added:

“.... The right to live with human dignity enshrined in Article 21 derives its life breath from the Directive Principles of State policy and particularly clause (e) and (f) of Article 39 and Article 41

30. AIR 1984 SC, 802.

and 42 and at least therefore, it must include protection of the health and strength of workers, men and women, and of the tender age of children against abuse, opportunities and facilities for children to develop in a health manner and in conditions of freedom and dignity education facilities, just and human conditions of work and maternity relief. These are the minimum requirements which must exist in order enable a person to live with human dignity and neither State nor Central Government has the right to take any action which deprive a person of the enjoyment of these basic essentials. Since the directive principles of state policy contained in clause (a) and (f) of Article 39, 41 and 42 are not enforceable in court of law, it may not be possible to compete the state through Judicial process to make provisions by statutory enactment or executive fiat for ensuring these basic essential which go to make up a life of human dignity.

“...But where legislation is already enacted by the state providing those basic requirement’s to the workmen and thus investing there right to live with basic human dignity with concrete reality and content, the state can certainly be obligated to ensure observance of such legislation for in action on the part of the state securing implementation of such legislation would amount to denial of the right to live with human dignity enshrined in Article 21.”³¹

31. Ibid

In *Neerja Chaudhari V State of M.P.*³² the Court said that the released bonded labour must be rehabilitated. The court assumed that livelihood was part of life and insisted on provision of livelihood to the released bonded labour. However, the Article 24 of the constitution which prohibits employment of children below the age of 14 years in a factory, mines or for hazardous work. There is also Child Labour (Regulation & Prohibition), Act 1986 which regulates the employment of children. The Supreme Court advised that children below 14 years of age should not be employed on construction work in accordance with Convention 59 of the International Labour Organization which has been ratified by India. Article 10 (3) of the Covenant prohibits employment of children in harmful work. The Directive Principles and the Fundamental Rights collision between two should be avoided as far as possible. The reasons why the founding father of the Constitution did not advisedly make these principles enforceable.

The court said, perhaps due to the vital consideration to giving the government sufficient latitude to implement these principles from time to time according to capacity, situation and circumstances that may arise.³³ Above all the rights of a child have not been well

32. AIR 1984 SC. 1099.

33. J.N. Panday, "Constitutional law of India" (25Ed.) (1993) P-272.

protected. Rights of child requires that the child be protected from neglect, cruelty and exploitation. The fact that children are working and suffering because, Article 39(a) says that tender age of children are not abused and citizens are not forced by economic necessity to enter jobs not suited to their age or strength.

CONCLUSION AND SUGGESTIONS

CONCLUSION

The Universal Declaration of Human Rights¹ was finally adopted by the General Assembly by a vote of 48 to nil with eight abstentions.² The Declaration has been hailed “ as an historic event of the profound significance and as one of the greatest achievements of the United Nations. The Declaration on Human Rights was prepared by the Commission on Human Rights in 1947 and 1948 and was adopted by the General Assembly on December 10, 1948 when the Universal Declaration of Human Rights was adopted it was most eloquent expression of hope by a world emerging from the most devastating war in the history of human race . The experience gave the Universal Declaration a momentum that is reflected in the boldness of this documents, destined for a world of peace where the right to live in peace has become

-
1. General Assembly Resolution 217-A of December 10 1948, General Assembly Official Records, Third Session, Part,1, Resolution, [United Nations Document A/810 pp71-77].
 2. The eight abstentions were Byelorussian, Czechoslovakia, Poland, Saudi Arabia, South Africa, Ukraine, USSR and Yugoslavia.

a reality for all ³ on December 10, 1998, 50th anniversary of Universal Declaration of Human Rights was celebrated all over the world. The Commission on Human Rights established by the Economic and Social Council in February, 1946 is the nearest approach to permanent machinery for the supervision of the problem of protection⁴ of Human Rights. Article 25, para. 2 of the Universal Declaration of Human Rights provides the Rights of all children to enjoy same social protection.

In its 44th Session held in Geneva from 1 February to 11 March, 1988, the Commission called for the highest priority to be given to rights of the children.

In its 45th Session held at Geneva from 30 January to 10 March, 1989, the Human Rights Commission approved 54 article draft convention on the rights of the child after a decade of negotiations. As a result of this, the General Assembly eventually adopted on 20th November 1989, an International Convention on the Rights of Child.

In its 47th Session held from 28 January to 8 March, 1991, the Commission covered a wide range of topics including the rights of mentally ill persons, environment, slavery and sale of children.

In its 48th Session held from 27 January to 6 March, 1992,

3. United Nations, Chronicle, Vol. XXV No.1 [March 1988] p.46.

4. Ian Brownlie, Principles of Public International Law, Second Edition, Clarendon Press, Oxford [1973], p.554 .

The Commission adopted the Programme of Action for the prevention of the sale of children, child prostitution and child pornography.

The highlight of the 49th Session of Commission of Human Rights from 1 February to 12 March, 1993 was the adoption of a Programme of Action for the Elimination of the Exploitation of Child Labour.

Now it is clear that the Universal Declaration of Human Rights played significant role in the elimination of child labour . After making various efforts child labour exist now a days.

In India the position of child labour is so miserable in comparison of other countries India has largest child labour in the world In pursuance of Supreme Court decision state government swing into action and conducted an collaborate survey on incident and prevalence of child labour. Data has been prepared soon dogged in controversies. One criticism ran in to air that data are unworthy, half-baked and hurriedly prepared. This unique opportunity to estimate the incidence of child labour has been lost and ended in virtual cover up exercises. However it has generated a wide debate and some steps have definitely taken in right direction Reservations are expressed regarding the establishment of child -cum- welfare board, under staff labour inspectorate and personnel is a stumbling block in the smooth implementation of judgement At the very nose of the capital the survey revealed that there are 1740 child labour

during 1996 ⁵ The 1991 Censure revealed that there are 11.28 million working children in the 5 to 15 age group⁶ in India.

In Rajasthan total number of child labourers identified in 31 districts was 8158 out of which 3164 were employed in hazardous and 4994 is non- hazardous industry. In Jaipur alone there is 364 child labours⁷.

In Orissa 2,15,000 child labour have been reported the highest in the India.

Maharashtra and Madhya Pradesh has reported 15,000 and 14,000 irrespectively ⁸.

According to the Supreme Court, U.P. has 6.15 lack child worker where as the states Government finding put the finger at 32000 where as 15000 are working in hazardous industries.⁹ Defaulting industries have been brought to the book and facing criminal prosecution.¹⁰ In Karanataka, the official survey estimate 96,520 child

5. The Qaumi Awaz [Urdu] July 3,1997 p.3

6. The Hindustan Times, New Delhi, February 20,2000, p.17.

7. The Times of India, New Delhi, July 8, 1997, p.8.

8. The Hindu, New Delhi, July 8, 1997 p.13.

9. The Pioneer, Chandigarh, July 22, 1997 p.4

10. The Hindustan Times, New Delhi, July 8,1997 p.3.

labourer where NGO's put the figure at 35 Lack.¹¹

In Tirpura 2400 child labour are working in different industries.¹² At the State Labour Minister meet, it was disclosed that 27 States and Union Territories has estimated at 5,00000 in which Orissa alone shares 2,15,000 while remaining 2,85,000 is the collective figure of 26 States and Union Territories.¹³

India has the largest number of child labourers in the world. The 1991 Census says there are 11.28 million working children in the 5 to 10 age group. The estimated number of bonded child labours in close to a million.¹⁴

About 92 million children are neither enrolled in school nor accounted for in the labour force. They are categorized as now when children only 60 percent of the Indian children (the total child population below 14 is 380 million, reach grade V and many of those "completing" primary school cannot read on write, about 53 percent of children below five are under nourished one is every 10 children suffers from disability the country, has some 400,000 child prostitutes.

11. The Indian Express, New Delhi, August 4, 1997, p.3.

12. The Hindu, New Delhi, July 6, 1997, p.10.

13. The Hindu, New Delhi July 8, 1997 p.13.

14. The Hindustan Times, New Delhi, Feb.20, 2000.p.17.

Child prostitution is increasing by 8 to 10 percent every year¹⁵ In view of these figures there exist sharp contradictions very difficult to reconcile because International Labour Organization asserts that every 4 children in India in the age group of 5-15 is a child labour ¹⁶

To tackle the problem Minister and secretaries has not shown enough enthusiasm to eradicate child labour The constitutional conspectus, International commitment, legal Framework, Judicial pronouncement remain par excellence however there is lack of will on the part of governmental enforcement and inspectorate, parents out of their destitution, area forced to send them for jobs for paltry sum of money Government has totally failed in providing compulsory and free education to the children On February, 8, 2000, in New Delhi¹⁷, 26th Conference held on child labour, in this conference the Government made certain recommendation as

1. Fixed age for employment
2. Amendment in Child Labour (Regulation and prohibition)Act 1986
3. Prohibition of hazardous nature of work

15 Ibid

16 Supra note, 13

17 Supra note 15.

it also expressed in the conference that 30% children are deprived from education and there are 60% child labour in the country.

SUGGESTIONS.

There is an urgent need for enforcement of compulsory education. It is the duty of the state to see the each and every child poor or rich, get free education up to the age of 14 years.

There is a need to impart education to the child worker, though child workers cannot attend normal schools during the usual school hours the only alternative is to provide them with some agency of education at a time when they are free for this purpose we need to set up night schools so that the poor child workers get opportunities to have at least primary education during their recess period spread of education will definitely make them rights conscious and realize the benefits which are given to them under various labour welfare legislation.

To ensure better and more effective enforcement of the laws, there should be effective machinery with active cooperation from the public is must. Social workers and voluntary organization should be persuaded to associated themselves with the law enforcement process.

Poverty is the main cause of child Labour. Therefore Government should take necessary Steps to remove out the poverty at some extent and to provide adequate job opportunities to the parents of the child workers.

BIBLIOGRAPHY

ARTICLES

ABBREVIATIONS

JOURNALS

MAGZINES

NEWS PAPERS

ENCYCLOPAEDIA

REPORTS

AND

CASES

BIBLIOGRAPHY

AUTHOR	BOOKS
01. Dr. V.G,Goswami [6 th Edition] 1996.	Labour and Industrial laws,
02. Dr. J.N. Pandey [25 Ed.] 1993.	Constitutional Law of India,
03. Dr. Pant	Economic History of India Under the Mughal [1990].
04. Dr. S.K. Kapoor	Human Rights Under International Law and Indian Law, Central Law Agency, Allahabad Ist Ed. August 1999.
05. Dr. H. M Seervi	Constitutional law of India [1975].
06. Dr. Jinesh Chandra and Kulsh reshra	Child labour in India [1978].
07. K.D. Srivastava	Minimum wages Act, [1948].
08. K.K. and Poonam Rani	Offences Against Children; Socio Legal Perspective [1991].
09. P.L. Malik .	Labour and Industrial Laws [4 th Ed. 1990].
10. R.N. Pati	Rehabilitation of Child Labours in India [1991].

ARTICLES

- 01 "Basic Frame Work for the Welfare of Working Children under the Indian Constitution- A Critical Appraisal" - K M H Rayappa, SCJ 1993, Volume 3
- 02 Barse, Sheela- " Child Playing with Fire Glass Factories of Ferozabad- I", Indian Express Chandigarh [April 5, 1986
- 03 Burra, Neera- Learning without Earning" Hindustan Times, Sunday Magazine, New Delhi, [Nov 15, 1987]
- 04 Burra, Neera " Exploitation of Child Worker in Lock Industry of Aligarh," Eco & Pol – Weekly, New Delhi, (11 July, 1987)
- 05 Burra, Neera " Old Flaws in New child Labour Bill", Times of India, New Delhi [Nov 7 1986]
- 06 Burra, Neera " Health Hazardous", 350 Seminar, [Oct 1988]
- 07 Cause of Exploitation of the Child Labour in India" Dr Amar Singh and Raghu vidra **Singh** SCJ 1993 Vol 3
- 08 Child labour Eradicating the Evil" Sunil, C Roy, Yojna, New Delhi, Jan 1996
- 09 Child Labour – "Right to Education, Judicial Trend in India" Prof Saleem Akhtar, Aligarh law journal 1996, Vol XI
- 10 Child Labour – A Socio' Legal Study" Pawan Sharma (I L I) New Delhi Vol 36 (April 2, 1994)

11. "Child Labour" Elais Mendelievitt, International Labour Review
[Sep. Oct. 1979,] Vol. 19, No.5.
12. Child Labour in Surat Textile Industries " V.C Sahu", Social
Change", Sep.1990 Vol. 20 No.3.
13. Child Labour is a Necessary Evil and Inevitable Social
Phenomenon in India" Miss Suprabha Rani, Civil Services
Chronicle, New Delhi, October 1994.
14. "Child Labour as Social Problem – Its Causes Effects and
Consequences" Padmani Sen Gupta, Social Welfare February.
1976, Vol. XXII No.11.
15. Children in Servitude" Padma, SCJ. Sep 1995, Vol.3 part 1.
16. "From GATT to WTO" Yojna, New Delhi, 1994 Nov. 30,
Vol-38 P-21.
17. "Judicial Response on Child Labour in India" P.L. Mehta and Sunil
Deshta, Cochin Law Review, Cochin University, Cochin, India.
1996.
18. "Lost Child hood" Chakarvaty Raghvan, Nation and the world,
Indian Publication Ltd, New Delhi, SepI 1996.
19. "Philosophy of Child Labour Welfare in Retrospect and Prospect"
Dr. P.L. Mehta and Sunil Deshta, Civil and Military law Journal,
Deep. & Deep. Publication (p) Ltd, New Delhi, Jan. to March 1988,
Vol.24 No.1.

20. "Legislative and Institutional Frame Work for Elimination of Child Labour," An analysis Prof. Saleem Akhtar, Nomani, Haris Umar, ALJ Vol. XII 1997 P_19 to 22.

ABBREVIATIONS

01	A C H P R	African Charter on Human and Peoples Right
02	A C H R	American Convention on Human Rights
03	A C H P R	African Commission on Human and People's Right
04	A I D S	Acquired Immune Deficiency Syndrome
05	A I R	All India Reporter
06	A J I L	American Journal of International Law
07	A L J	Aligarh Law Journal
08	American Rep	American Reporter
09	American Rev	American Review
10	A R U N A	Annual Review of U N Affairs
11	B Y B I L	British Year Book of International Law
12	Cali L R	California Law Review
13	Col L R	Columbia Law Review
14	C P R W	Convention on the Political Rights of Women
15	F A R	Foreign Affairs Reports
16	G A T T	General Agreement on Trade and Tariff
17	Har L R	Harvard Law Review

18. H.R.C. : Human Rights Commission.
19. H.R.D. : Human Resources Development.
20. H.C.H.R. : High Commissioner on Human Rights.
21. I.C.H.R. : International Convention on Human Rights.
22. IECOSCO. : International Economic and Social Cooperation
23. I.L.I. : Indian Law Institute.
24. I.L.O. : International Labour Organization.
25. I.O. : International Organization.
26. J.I.L.I. : Journal of the Indian Law Institute.
27. J.I.L.E. : Journal of Institute law and Economics.
28. I.L.R. : International Labour Review.
29. J.L.E. : Journal of Law and Economics.
30. L.I.C. : Labour and Industrial Cases.
31. S.C.C. : Supreme Court Cases.
32. S.C.J. : Supreme Court Journal.
33. Sec. : Section.
34. S.C.R. : Supreme Court Reporter.
35. S.F.C : San Francisco Conference.
36. U.D.H.R. : Universal Declaration of Human Rights.
37. U.E.E. : Universal Elementary Education.
38. U.N. : United Nations.
39. U.N.C. : United Nations Charter.
40. U.N.C. : United Nations Chronicle.

- 41. U.N.I.C.E.F. : United Nations International Children & Education Funds.
- 42. U.N.O. : United Nations Organization.
- 43. V.D.H.R. : Vienna Declaration on Human Rights.
- 44. Vol. : Volume.
- 45. W.H.O. : World Health Organization.
- 46. W.T.O. : World Trade Organization.

JOURNALS

- 01 All India Reporter.
- 02 Aligarh Law Journal.
- 03 Civil and Military Law Journal.
- 04 Cochin University Law Review.
- 05 Industrial and labour law Cases.
- 06 Supreme Court Cases.
- 07 Supreme Court Journals.
- 08 The Indian Journal of Labour Economics.
- 09 The Journal of Indian Law Institute.

MAGZINES

01. Civil Services Chronicle.
02. Economic & Political Weekly.
03. India Today.
04. Social Change.
05. Social Welfare.
06. World Focus.

NEWS PAPERS

- 01 Indian Express
- 02 The Hindu
- 03 The Hindustan Times
- 04 The Times of India
- 05 The Pioneer
- 06 Qaumi Awaz

ENCYCLOPAEDIA

- 01 Encyclopaedia American, American Corporation, New York, Vol 6
(1976)
- 02 Encyclopaedia of Social Work in India, New Delhi, (Vol I) (1987)
- 03 The Encyclopaedia of Britannica, Chicago, Vol 19, (1987)
- 04 The New Encyclopaedia Britannica Macropadia, Chicago, Vol II,
15th Ed (1978)
- 05 The World Book Encyclopaedia, Vol III (1983)

REPORTS

01. **Census of India, Series I, India, Part II, Special Report and Tables based on Five- Percent Sample Data, 1984.**
02. **Children and Women in India: A Situational Analysis, New Delhi, UNICEF, India Office,(1990).**
03. **Government of India : Report of Committee on Child Labour (New Delhi Ministry of Labour, (December 1979).**
04. **The Gurupadswani Report Committee on Child Labour 1979.**
05. **I.L.O.: Report of the Director – Journal, International Labour Conference, 69th session, Geneva, Part (1983).**
06. **National Human Right Commission : Annual Report 1995-1996.**
07. **Reports of Director General, ILO, Youth & Work (1960).**
08. **Reports of National Commission on Labour (1969).**
09. **The Royal Commission on labour in India.**

TABLE OF CASES

01. Airport Authority V. Union of India. AIR. 1979 SC 1428
02. Ajay Hasiy V. Khalid Mujeeb AIR 1986 SC 487.
03. Anglo Iranian Oil Company Ltd. V. S. U. POR22
04. A.V. Chandelle V. University of Delhi AIR 1978 P_308.
05. Bandhua Mukti Morcha V. Union of India AIR. 1984 SC.802.
06. Bapuji Education Association V.State of Karnataka. AIR. 1986
p.149.07.
07. Bijoy Cotton Mills Ltd. V. State of Rajasthan AIR. 1955,
SC p.33.
08. Deena V Union of India AIR. 1983. 1155.
09. Francis Coralie V Administration of Delhi,AIR 1978, SC 597.
10. Hussain Ara Khatoon V.State of Bihar 1989 SC 1360.
11. Kehvanand Bharti V. State of Kerala AIR. 1973 SC 146.
12. M.C. Mehta V State of Tamil Nadu AIR 1991 SC 417.
13. M.C. Mehta V. State of Tamil Nadu AIR.1993 SC 2178.
14. M.C. Mehta V. State of Tamil Nadu AIR. 1997 S.C. 699.
15. Miss Mohini Jain V. State of Karnataka AIR. 1992 SC 1858
16. Murali Krishnan V.Delhi University AIR. 1978 p.308
17. Nottebohm (Liechtenteia V.Guatemala). Second phase I.C.J.
Reports (1955) p.4.
18. Peoples Union for Democratic Rights V. Union of India. AIR 1982
S.C 1973.

19. Salal Hydro Project V. State of Jammu & Kashmir AIR1984 SC 179.
 20. Sheela Barse V. Secretary Children Aid Society & Others (1987) 3 S.C.C. p.50 at 55.
 21. Sheela Barse V. State of Maharashtra (1983) 2 S.C.C. 96.
 22. S.P. Gupta V. Union of India , AIR 1982,SC,149.
- Unni Krishnan J.P V. State of Andhra Pradesh AIR1993 SC. 2178.

65
100
R.P. Tripathi
21.9.2000